The Solicitors' Journal

VOL. LXXXIV. **Saturday, March 2, 1940.** No. 9

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

The Detection of Crime.

POLICE authorities throughout the country have been informed that new financial arrangements have been made to enable forensic science laboratories and wireless facilities to be available to all forces for the prevention and detection of crime. The outbreak of war has led to the modification in some directions of the original scheme based on the recommendations of the Departmental Committee of Detective Work and Procedure—thus it is no longer intended to proceed with the part of the scheme relating to the training and experimental centre for police dogs—but the main lines of that scheme are being followed and the new services, which are to be maintained on a firm financial contributory basis according to the establishment of the various forces, are to be thoroughly up to date. Police forces throughout the country —other than the Metropolitan Police Force, which has its own scheme—will be served by science laboratories and wireless facilities established on a regional basis. One-half the expenditure involved will be discharged by the Exchequer and the remainder by the authorities concerned, which will contribute on a basis of so much a head of their establishment. Laboratories already set up in various provincial centres are regarded by the Home Secretary as valuable adjuncts to police work; and it is proposed to add another as soon as possible. It is indicated that the new financial arrangements will be put in hand in the course of the next financial year. The Home Secretary has expressed the opinion that the scheme is one which will contribute substantially to the efficiency of the police service as a whole, while at the same time it will involve the least possible interference with the existing financial and administrative arrangements.

Manorial Records.

The Law Society's Gazette recalls that the Master of the Rolls has made a special appeal to solicitors not to send documents which may be of historical interest to the waste paper trade for pulping. It is observed that Sir WILFRID GREENE, M.R., now calls the attention of the profession to the particular matter of manorial records, of which a considerable quantity is believed still to remain in solicitors' offices up and down the country. Manorial records are placed by statute under his care, and the Master of the Rolls is confident that solicitors will be vigilant to see that no such records are sold to waste paper merchants.

Coal Marketing Schemes.

A REPORT by the Mines Department (Cmd. 6170, H.M. Stationery Office, price 4d. net), which has recently been issued, deals with coal marketing schemes in relation to the varying economic conditions which have from time to time prevailed since their introduction. It is pointed out that the active marketing conditions at the time of their inception were more responsible than the schemes themselves for the improved financial results recorded during the first three years. During 1937 buyers were unable to foresee a point when a halt might be expected in the upward trend of prices, and there was a tendency to buy well in advance of current needs; and when in 1938 the recession in industrial activity occurred, the contraction in the demand for coal was disproportionately great. These conditions imposed a sudden and severe strain on the marketing system, and, according to the Mines Department, prices would, in the absence of statutory control, have fallen to low levels. Some reductions had to be made, but on the inland market the control bodies succeeded in maintaining prices on the whole at the levels obtaining at the beginning of the year. The report also refers to further steps which have been taken to bring about co-ordination between the coal-mining districts—e.g., by rendering it obligatory to refer inter-district matters to co-ordinating committees, and by vesting final sanction in the Central Council—and attention is drawn to the directions issued by the Central Committee in regard to the co-ordination of rail-borne and coastwise trades. At first the arrangements put into effect under the directions of the Central Council applied only to London and prohibited the sale of coal to any distributor without the prior approval of the London Area Co-ordinating Committee, but the results achieved were sufficiently encouraging to lead the Central Committee to bring into force similar arrangements in respect of an area south of a line drawn from the Wash to the Bristol Channel. A scheme for the co-ordination of the export trade is contained in directions involving (*a*) the fixing of the relative tonnage shares of the districts concerned, (*b*) the preparation for the Central Council's approval of minimum export price schedules by the exporting districts, (*c*) consultation between districts in regard to tonnage, price, etc., and (*d*) suitable activity by executive boards to establish effective control for the carrying out of the foregoing provisions. The putting of this plan into operation was interrupted by the war.

Road Safety: A Comprehensive View.

The Times motoring correspondent in a recent letter to that newspaper deprecates piecemeal proposals—affecting exclusively either the motor driver, the cyclist, or the pedestrian—directed to the solution of the road accident problem. Such proposals, in his view, breed a feeling of injury and injustice; and he thinks that the problem will never be solved or even partly solved unless all the various elements, including the vehicle and the highway, are considered in their relation to one another. The reckless motor driver, the careless cyclist, and the foolish pedestrian, must be safeguarded in spite of themselves. The writer expresses his conviction that, within a comparatively short time, not only would certain recommendations, warnings, and restrictions in respect of the human element and improvements or modifications in the vehicle and highway bring down the curve of accidents, but that the benefit would continue inasmuch as the public accepts, particularly in a time such as the present, new customs without too heavy a sense of injury or loss of freedom. The writer does not indicate in detail the nature of the changes he advocates, his purpose being rather to maintain that the present time is unusually favourable both for the introduction of propaganda—by the Press, on the air, on the screen, and in pamphlet, leaflet and poster forms—for greater road safety, and also for the enforcement of regulations. The public to-day would, he thinks, listen more than heretofore to advice, recommendations, regulations, and restrictions, provided that all classes of road users were affected and the urgency and potency of the reform were suitably disseminated in the manner indicated.

Town and Country Planning.

A PLANNING scheme on more ambitious lines than any hitherto adopted, and one involving greater restrictions on landowners, is contained in a draft statement of policy which has been submitted to the Council for the Preservation of Rural England, the National Council of Social Services, the Royal Institute of British Architects and other bodies, and was recently discussed at a conference organised by the Garden Cities and Town Planning Association. The scheme proposes that a central authority should be set up to enforce, in conjunction with the administration of the Town and Country Planning Act, 1932, a national policy to conserve the national resources and to guide future land development and redevelopment and the general grouping of population. It is urged that distinction between town and country should be maintained in all development and that widely sprawling houses and factories or other buildings in the country should be strongly discouraged. Where new towns are desirable their location should be planned as compact units, and power should be taken to restrict under licence the settlement of new businesses in overgrown or congested towns and undeveloped areas. To provide reasonable compensation for landowners deprived of prospective building value a national compensation fund should be set up derived from the value of land zoned for building and strictly earmarked for compensation under planning schemes. Mr. F. J. OSBORN, hon. secretary of the Garden Cities and Town Planning Association, urged that cities admittedly too large already should have a stop put to their further growth by ringing them round with inviolable green belts. Any spill-over of their industry and people should be guided into compact, well-planned sociable and efficient new towns having their own green belts. The pattern to work to was one of smaller towns on a general background of green country. Professor P. ABERCROMBIE intimated that the Royal Institute of British Architects was in general agreement with the draft scheme.

National Health Insurance: Minister's Decisions.

SUPPLEMENT No. XVI to the volume of memoranda of decisions (Memo. 151, September, 1931), given by the Minister of Health concerning liability to insurance under the National Health Insurance Act, contains some interesting cases deserving of brief mention. One case relates to a taxi driver who with a number of others formed an association to meet local competition and with a view to their mutual advantage by co-operation. A firm obtained a motor-cab under a hire-purchase agreement and hired it out to the driver at a fixed weekly charge. The latter plied for hire and his net earnings did not exceed £250 a year. The Minister decided that the driver had been employed within the meaning of Pt. I, para. (*e*), of the First Schedule to the National Health Insurance Act, 1936, and had been employed within the meaning of the Act by the firm. This decision was upheld by BRANSON, J., on 3rd November, 1939. Another case concerned one employed by wine and spirit merchants as the manager of licensed premises at a remuneration, including the value of free quarters, of over £250 a year. The man was assisted by his wife, who served in the shop at busy times and when he himself was out canvassing for orders, and took charge with the employers' permission when he was on holiday. The Minister decided that the employment was employment otherwise than by manual labour at a remuneration above the statutory limit, and was accordingly not within the Act. This decision was also upheld by BRANSON, J., on the date above mentioned. Other decisions relate to a strike picket, a skipper and part owner of a whelking boat, a chef employed by a steamship line, and a shot firer and assistant deputy in a colliery. In the first of these cases it was decided that the man was employed under a contract of service within the meaning of the Act; in the second case, where the part owner of a whelking boat (following an accident at sea) was engaged exclusively in shore work and received one-third of the proceeds of the catch, it was decided that he was not employed within the meaning of Pt. I, para. (*g*), of the First Schedule to the Act of 1936; in the third case it was decided that the employment was by way of manual labour and within the Act irrespective of the rate of remuneration; and in the last case it was decided that the employment was otherwise than by way of manual labour at a rate of remuneration exceeding in value £250 and not within the Act. The supplement, which is published by H.M. Stationery Office, price 3*d*. net, contains extracts from the judgments of BRANSON, J., above referred to, and particulars of a case (submitted to the High Court under s. 161 (1) (iii) of the Act of 1936) relating to a sub-postmaster remunerated by scale payments whose employment was held to be insurable under the Act by the same learned judge.

Recent Decisions.

IN *Rex* v. *Cronin* (*The Times*, 27th February), the Court of Criminal Appeal (CHARLES, HUMPHREYS and TUCKER, JJ.) held that proceedings at borough sessions before one who had been appointed by the recorder as his deputy, but who was not a barrister, were void *ab initio* and the court directed a new trial of the appellant who had been convicted in those proceedings of dangerous driving.

In *Camden Nominees, Ltd.* v. *Forcey and Another* (*The Times*, 28th February), SIMONDS, J., held that the defendants, who were tenants of a block of flats, had without justification interfered or threatened to interfere with the contracts between the landlords and tenants and, on a motion which was treated by agreement between the parties at the trial of the action, granted an injunction to restrain the defendants from doing any acts, or making any statements, or taking any steps calculated or intended to induce the tenants of the plaintiffs' flats to commit breaches of their tenancy agreements by a refusal to pay their rents. *Brimelow* v. *Casson* [1924] 1 Ch. 302 distinguished. The question of withholding rent is discussed in this week's "Landlord and Tenant Notebook," at p. 143.

Criminal Law and Practice.

EVIDENCE AFTER CLOSE OF PROSECUTION'S CASE.

As a general rule, once the case for the prosecution is closed, counsel for the defence knows the full extent of the case which he will have to meet if he decides to call the prisoner. There are cases, however, as was recently shown in the Court of Criminal Appeal (*R.* v. *Day* (1940), 1 All E.R. 402), where the prosecution may be permitted to call rebutting evidence after the close of the case for the defence, or the judge himself may decide to call witnesses after the close of the case for the prosecution.

The appellant in *R.* v. *Day* was convicted of the offences of forgery of a cheque and causing its proceeds to be paid over. The prosecution's case consisted of the evidence of an accomplice who had stolen the cheque, and some letters which were stated to be in the handwriting of the appellant. Counsel for the defence submitted that the accomplice's evidence was not corroborated, but the judge, while remarking on the absence of expert evidence as to handwriting, refused to withdraw the case from the jury. The prisoner was called, and denied that he had written the cheque or signed it. At the close of the prisoner's evidence the judge adjourned the case and suggested that the prosecution might consider whether further evidence should be called. When the case was resumed, permission was asked on behalf of the prosecution to call a handwriting expert to prove similarities between the writing on the letters and the writing on the cheque. Counsel for the defence objected, on the ground that "nothing has arisen *ex improviso* which could justify the calling of fresh evidence." The judge overruled the objection, the fresh evidence was called, and the accused was convicted.

The court allowed the appeal on the ground that the matter had not arisen *ex improviso*, "if those Latin words are given the meaning which was originally attributed to them." The words of Lord Hewart, L.C.J., in *R.* v. *Liddle*, 21 Cr. App. Rep. 3, were quoted by the court: "If the same reasoning were to apply, it would have been perfectly open for the defendant, on the second of these adjourned hearings, to require a further adjournment in order that he might call, in his turn, rebutting evidence, and so the inquiry might wander on indefinitely." That was a case in which it was held that under the circumstances the defence of alibi was not *ex improviso*, even if it was not set up before the magistrates, as the onus was on the prosecution to prove the whereabouts of the accused at the material time. Of course, an alibi which is not set up at the earliest possible opportunity is for that reason alone to be examined very closely (*R.* v. *Jones*, 21 Cr. App. Rep. 27), and, as decided in *R.* v. *Frogatt*, 4 Cr. App. Rep. 115, there may be circumstances in which rebutting evidence may be called, even where the defence has already been set up before the magistrates.

The leading statement of the law on the subject is contained in the judgment of Tindal, C.J., in *R.* v. *Frost*, 9 C. & P. 129, 159, where he said: "There can be no doubt about the general rule, that where the Crown begins a case (as it is with an ordinary plaintiff), they bring forward their evidence, and cannot afterwards support their case by calling fresh witnesses, because there may be evidence in the defence to contradict it. But if any matter arises *ex improviso*, which the Crown could not foresee, supposing it to be entirely new matter, which they may be able to answer only by contradictory evidence, they may give evidence in reply."

The right of the judge to call a witness in the interests of justice, without requesting the consent of the prosecution or the defence, was established in *Reg* v. *Chapman*, 8 C. & P. 558, and *Reg* v. *Holden*, 8 C. & P. 606. In both of these cases the witnesses in question were not called by the prosecution, and in the latter case the judge pointed out that every witness who was present at a murder should be called, even if they gave conflicting accounts. This right was reaffirmed by the Court of Criminal Appeal in *R.* v. *Dora Harris* [1927] 2 K.B. 587. That case also affirmed the principle laid down in *R.* v. *Frost* (above) with regard to the calling of rebutting evidence after the close of the case for the prosecution. Whether rebutting evidence is required to meet a matter arising *ex improviso* is a question which must depend on the circumstances of the individual case before the court, and that, no doubt, is the meaning of such cases as *R.* v. *Crippen* [1910] 1 K.B. 149, and *R.* v. *Sullivan* [1923] 1 K.B. 47. In both of these cases the well-known *dictum* of Tindal, C.J., in *R.* v. *Frost*, cited above, was quoted in argument. It is true that in the *Crippen Case* Darling, J., said: "We do not feel inclined to lay down the rule as strictly as Tindal, C.J., did in *R.* v. *Frost*. We do not propose to adopt the language of Tindal, C.J. The rule laid down in these terms may, we think, place an unfair burden on counsel for the prosecution in some cases. We prefer to express the rule by saying that the rebutting evidence must in the first place be evidence which is admissible in law. Assuming it to be admissible evidence, it then becomes a question for the judge at the trial to determine in his discretion whether the evidence, not having been tendered in chief, ought to be given as rebutting evidence." With regard to the duty of the Court of Criminal Appeal, Darling, J., said: "The matter is one which is in the discretion of the judge who presides at the trial, who is in a much better position than any court before which an appeal comes to determine whether it is really fair to allow the rebutting evidence to be given or not and whether it does or does not expose the defence to a disadvantage to which it ought not to be exposed." This was approved by Avory, J., who delivered the judgment of the court in *R.* v. *Sullivan*, above. *R.* v. *Frost*, however, if it ever was in doubt, is now fully re-established by *R.* v. *Dora Harris* and *R.* v. *Day* (above).

That is not to say that exceptional cases do not arise when the blanks in the prosecution's case may be filled in by the judge. In *Rex* v. *M.*, 32 T.L.R. 1, for instance, where a person was convicted in 1915 of communicating information to the enemy, letters in German, which had been put to the appellant in cross-examination, were permitted to be put in, in translation, at the close of the case, for the assistance of the jury.

From the decision in *R.* v. *Cliburn*, 62 J.P. 232, it would appear that where the court calls a witness after the close of the case for the prosecution, the court has no power to allow the defendant's counsel to cross-examine, but that he has the right to put questions, through the medium of the court. There is authority, however, that a judge has power, if he recalls a witness for the purposes of justice, to give the defendant's counsel an opportunity of cross-examining the witness.

There is, perhaps, one other class of case in which it is sometimes permissible for the prosecution, and therefore for the judge, to call rebutting evidence, and that arises where the prisoner has tendered evidence of good character. In *R.* v. *Hughes* (1843), 1 Cox Cr. Cas. 44, Rolfe, B., admitted that evidence of good character was "a new fact introduced," and that it was therefore competent for the prosecution to call evidence to contradict it, but added: "I never saw evidence of this nature given, except in the case of a previous conviction, and I think you had better not call any witnesses for the purpose." In *R.* v. *Burt*, 5 Cox Cr. Cas. 284, Martin, B., consulted with Erle, C.J., and stated that he had said that he had never known such a course pursued, and thought it ought not to be allowed. The same judges, however, acquiesced in a contrary decision in *R.* v. *Rowton*, 34 L.J.M.C. 57, where Cockburn, C.J., referring to the rebutting evidence, said: "I think that that evidence must be of the same character and kept within the same limits; that while the prisoner can give evidence of general good character, so the evidence called to rebut it must be evidence of the same general description."

These, however, are exceptional cases, and, as stated in the headnote to *R.* v. *Hughes*, above, it is quite uncommon for the prosecutor to be permitted to call evidence to rebut the evidence tendered by the prisoner of his good character, except in the case of a previous conviction. The rule in *R.* v. *Frost*, which has again been approved, is one which in the majority of cases operates in favour of the accused and in the interests of justice.

The New Statute of Limitations.

II.

THE Limitation Act, 1939, retains the twelve-year period (formerly applicable under the Real Property Limitation Act, 1874) for actions by ordinary subjects to recover land (s. 4 (3)). In connection with land, therefore, the changes which are made mainly concern the highly technical provisions relating to the accrual of the right of action, i.e., the date from which the twelve years run.

In two special cases, however, the period is changed. The Crown is, in future, to have only thirty years from the date when the cause of action accrued, or sixty years for actions to recover foreshore (s. 4 (1)). But time does not run against the Crown in favour of a tenant at will of Crown lands (s. 9 (4)). Spiritual or eleemosynary corporations sole are also to have a thirty-year period for actions to recover land (s. 4 (2)). And ss. 4 (3) and 6 (2) contain consequential provisions dealing with cases where the cause of action originally accrues to the Crown or a corporation sole, but the action is brought by an ordinary subject, and where the Crown or corporation sole is entitled in remainder. These rules supersede those of the Crown Suits Acts, 1769 and 1861, and the Real Property Limitation Act, 1833, s. 29, under which much longer periods were applicable.

In ss. 4–17, which deal with actions to recover land, advowsons and rent, the Limitation Act, 1939, largely re-enacts substantial parts of the Real Property Limitation Acts, 1833 and 1874. The new sections, however, are expressed in modern, and plainer, language. One very important change of drafting is that the old Acts referred throughout to the recovery of "land or rent"; this phrase caused confusion whenever it was necessary to distinguish between a rent-charge and a rent reserved on a lease. The new Act uses the word "land" to include the incorporeal hereditament "rent-charge" (s. 31 (1)), leaving "rent" to mean rent service. Another change, for clarification, is that the title of persons whose actions are barred is extinguished only in the case of actions to recover land or advowsons, or redemption actions. The old section was supposed to have some application to actions to recover money charged on land (see *Re Hazeldine* [1908] 1 Ch. 34; *Re Fox* [1913] 2 Ch. 75). This is no longer so. There is also a clearer provision (s. 5 (2) and (3)) regarding the date from which time runs against a person claiming land under an assurance made by a person in possession or on the death of a person in possession. The date is that of the death or that on which the assurance takes effect, as it was under the Real Property Limitation Act, 1833, s. 3. But the old section was probably confined to the case of a person taking the very estate which the deceased or the grantor had, and certainly did not apply where a rent-charge was created out of that estate. The new provision expressly covers the interest of the deceased or of the grantor and any sub-interest derived out of it.

It has always been the rule that time does not run against the true owner's right to recover land unless the land is in the "adverse possession" of another. This phrase has changed its meaning since the eighteenth century, and was not used in the older statutes, though the rule was clear (see *Trustees' Agency Co.* v. *Short*, 13 App. Cas. 793). The new Act, however, uses it and defines it as meaning "the possession of some person in whose favour time can run" (s. 10 (1)). Time cannot run in favour of a trustee, and accordingly a trustee cannot have adverse possession (s. 19 (1)).

But a further complication arises from the fact that the provisions of the new Act relating to trustees extend to constructive trustees, with the consequence that a constructive trustee in possession cannot acquire a title by time. This change has necessitated further changes of machinery regarding settled land and land held on trust for sale. If land is held in trust for A for life with remainder to B, and X enters in A's lifetime, time runs as against A from the entry, and A's equitable life estate will be barred in twelve years. But time will not, of course, begin to run against B's equitable estate till it falls in. Since 1925, however, the legal estate in fee simple would necessarily be vested in A, under the Settled Land Act, and under the law in force at the moment of writing, the fee simple of A would be barred in twelve years. Thereafter X would hold the legal estate as constructive trustee for himself for life, with remainder to B. But, under the new law, a constructive trustee cannot acquire a title against his beneficiary (s. 19 (1)). Accordingly X could never acquire the whole beneficial interest, however long he stayed in possession. As this state of the law would largely undermine the law of limitations upon actions to recover land, it has been provided, in effect, that where a title by time is acquired to settled land the legal estate is to remain in the estate owner who previously had it, until all the equities are extinguished (s. 7). Similar provision is made in the same section regarding land settled on trust for sale. But there is no corresponding provision regarding settled chattels.

All the matters to which reference has already been made are comprised in Pt. I of the Act; all the prescribed periods are, therefore, subject to the extensions mentioned in Pt. II, i.e., ss. 22–26.

Section 22 deals with the extension for disability of the plaintiff. The extension is to be for six years after the death of the disabled person or his ceasing to be under a disability, whichever first occurs. Under the old law the periods of extension for different classes of action differed widely from one another. Under the new law there are the few express exceptions laid down in s. 22, and no others. The exceptions are (i) that in cases against public authorities (*a*) the extension is for one year instead of six, and (*b*) where the disability is infancy or unsoundness of mind, there is no extension if the plaintiff was in the custody of a "parent" when the cause of action accrued; (ii) in cases of actions to recover land or money charged on land (but not money charged on personalty) the action must be brought, so far as s. 22 is concerned, within thirty years of the accrual of the cause of action; (iii) in cases of actions to recover penalties there is no extension for disability at all, unless the action is brought by an "aggrieved party."

The only disabilities now recognised are those of the plaintiff; the former rules extending the period for the absence of the defendant beyond the seas are abolished. The only disabilities of a plaintiff formerly recognised and still recognised are infancy and unsoundness of mind (s. 31 (2)). But for the future "a convict subject to the operation of the Forfeiture Act, 1870, in whose case no administrator or curator has been appointed" is also to be treated as suffering from disability, though he has not been so up to now. By s. 31 (3) it is provided, in effect, that if a person has been treated under the lunacy laws as being insane, he is to have the benefit of the extension for unsoundness of mind, even though he was sane all the time. This provision changes the old, very unjust, rule under which it was held that a person who was improperly incarcerated in an asylum could not sue (after six years) on matters arising out of his original incarceration; he ought never to have been incarcerated, because he was sane, and, therefore, on his own showing, was never of unsound mind (*Harnett* v. *Fisher* [1927] A.C. 573).

Sections 23 to 25 now deal uniformly with extensions for acknowledgment or part payment. The main change here is that in all cases what is now required is a simple acknowledgment of the creditor's right. This was the old specialty rule. In cases of simple contract it was formerly held necessary that there should be words expressing or implying a fresh promise to pay. This rule gave rise to a vast quantity of litigation upon " the exact meaning and effect of the precise words employed by generations of shifty debtors " (*per* Lord Sumner, in *Spencer* v. *Hemmerde* [1922] 2 A.C. 507, 534), which was always unedifying for its nicety, and will now be unnecessary. The law is further clarified by s. 24, which provides that all acknowledgments must be in writing, and must be made by the acknowledgor (or his agent) and to the acknowledgee (or his agent). And s. 25 deals comprehensively with the effect of an acknowledgment or part payment by one of several co-debtors upon the other co-debtors.

Section 26 postpones the running of time in cases where the action is based on the fraud of the defendant or his agent, or where the existence of the right of action is concealed by such fraud, or where the action is one for relief from the consequences of a mistake. Time is not to begin to run until the plaintiff actually discovers the fraud or mistake, or should, with reasonable diligence, have done so. The rules of s. 26 now apply to all actions, both at common law and in equity. It has always been the rule in equity (and in cases relating to land since 1833) that there was a postponement for mistake or fraudulent concealment. This rule is now extended to actions at law. It is an entirely new rule that there is to be postponement if the action is *based* on fraud. One consequence, of far-reaching importance, must be that there is always liable to be a postponement in the common law action of deceit.

Finally, Pt. III of the Act contains some miscellaneous rules. Section 30, applying the Act to the Crown, has already been noticed. Section 27 applies it to all arbitrations. Section 28 lays down that time is to cease running against a counter-claim on the date of the writ, and not of the counter-claim, as it formerly did. The old rule that time ceases to run against a set-off at the date of the writ is confirmed by s. 28.

Section 32 saves all special periods of limitation provided by other unrepealed enactments, as, for example, the three-year period in respect of infringement of copyright or conversion, under the Copyright Act, 1911, with the proviso that if the action is against a public authority and the special limitation period is longer than that provided by s. 21 of the new Act, the period of s. 21 is to prevail.

Section 33 provides for the transition from the old law to the new. If proceedings are already barred on 30th June, 1940, they will not be revived by the fact that the relevant period under the new law is longer (s. 33 (*a*)). Proceedings started before 1st July, 1940, are to be tried under the old law (s. 33 (*b*)). Apart from those rules, the whole of the new law operates as from 1st July, 1940 (s. 34 (2)). Thus, if a period would have expired under the old law at a date soon after 1st July, 1940, but the new period is longer, the plaintiff will have the benefit. Conversely, though a period was not about to expire under the old law, the defendant will have the benefit, if the writ is issued on or after 1st July, 1940, and the period is shortened. Accordingly, solicitors must exercise great vigilance in the next few months, lest their clients' action become barred overnight.

This and the previous article have sought to explain, within a very limited compass, the principal changes made by this extremely important Act. But the Act, though of comparatively few sections, covers a field far too great to be adequately summarised here. It is likely, indeed, to cause much food for thought in the profession, and will repay very careful study. In these days its nature may be thought unspectacular, and even, perhaps, remote from temporary troubles. But its predecessors have shown a surprising durability; the Limitation Act, 1623, though under sentence of death, is still in force 316 years later. Beside such permanence, to-day's troubles are transient, and it is as certain as anything can be that, whatever else happens, the profession must expect to live under the Limitation Act, 1939, for the lives of all of us now living, and those of several generations of our successors.

Company Law and Practice.

Rectification of Articles of Association.

UNTIL a recent decision on the point, the reports apparently contained only one case relating to the interesting question of the power of the court to order rectification of the articles of association of a company. The explanation of the paucity of decisions on this matter is, no doubt, the simple one that in most cases where, assuming the court had jurisdiction to rectify the articles, an order for rectification would be proper, the necessary alteration has been effected in the ordinary way by a special resolution of the shareholders; though the availability of this machinery would not, of course, assist shareholders who have not the necessary three-quarters majority of votes if the other shareholders opposed the alteration.

The earlier reported case is that of *Evans* v. *Chapman*, 18 T.L.R. 506. The facts there were rather curious and, I think, clearly established a case for rectification if the court had the necessary jurisdiction. There was a scheme for reconstruction involving the formation of a new company: a number of fully-paid shares in the new company were to be issued to the vendor company as part of the purchase price, and some 100,000 shares credited as partly paid were to be open to tender by the liquidators of the old company or their nominees; fourteen shares were to be left liable to be paid up in full. The 100,000 shares were to be offered to the public subject to a preferential right on the part of the liquidators' nominees to an allotment of the shares. It was necessary, of course, to comply with the then requirements of the Companies Acts (s. 14 of the Companies Act, 1900) that before allotment the minimum subscription fixed by the company's regulations and named in the prospectus should be subscribed and the money payable on application in respect of the minimum subscription paid to and received by the company. For this purpose it was intended to provide by the articles of association that the minimum subscription should be seven shares. A prospectus was issued in which it was correctly stated that the minimum subscription on which the directors might proceed to allotment was seven shares of £1 each, but the articles of association contained the provision that if the company should offer any of its shares to the public for subscription the directors should not proceed to allotment unless and until at least 7 *per cent.* of the shares so offered should have been subscribed and the sums payable on application received. In preparing the articles the draftsman had made use of a print of the articles of another company, in which the minimum subscription was fixed at 10 per cent. of the shares. He altered the figure to 7 and struck out the words " per cent.," but the printer reproduced those words, so that the document ran " 7 per cent. of the shares." In revising the proof the draftsman struck out the words " per cent." and the proof as corrected was produced to a meeting of the old company and approved. Unfortunately the correction did not find its way to the printers, so that the articles in their final form as registered contained the requirement that the minimum subscription should be 7 per cent. of the shares.

As a result of the prospectus numerous applications were received for shares, but none had been allotted. When application was made to the registrar for leave to commence

business he pointed out the discrepancy between the prospectus and the articles, and declined to certify that the company was entitled to commence business. Accordingly an action was started by one of the signatories to the memorandum and articles against the other signatories and the company asking that the articles might be rectified by striking out the words "per cent."

The matter came before the court on a motion and Joyce, J., expressed the view that the general jurisdiction of the court to rectify instruments had no application to articles of association which had only a statutory effect; and he intimated that the proper method of correcting the clauses was by passing a special resolution to alter the articles. Accordingly the motion was dismissed.

It may be observed that according to the report counsel for the defendants supported the application, so that it would appear that all the signatories were agreeable to the alteration, and consequently that no difficulty would have been found in passing the necessary resolution to alter the articles. Presumably the matter was of great urgency and it was desired to save time by obtaining an order on motion for rectification instead of calling the necessary general meetings.

The recent decision to which I have referred is that of Bennett, J., in *Scott* v. *Frank F. Scott (London) Limited* (1940), 56 T.L.R. 308. There the company had been formed by three brothers who held the share capital in equal shares; the action was brought by the executrix of one brother, claiming to be placed on the register in respect of his shares. It would not, I think, serve any useful purpose to reproduce here the relevant articles of the company, which were of a somewhat special nature; suffice it to say that the learned judge held that on the construction of the articles the plaintiff was not entitled to be placed on the register but was bound to offer the deceased's shares to the other shareholders. The defendants—the company and the two other brothers—had counter-claimed for a declaration to this effect, and had further counter-claimed that if the construction for which they contended should not be correct the articles should be rectified so as to give the two brothers the right to acquire the deceased's shares.

Having regard to the decision on the question of construction, the claim to rectification was not necessary for determination, but judgment was given on the point in view of the possibility of an appeal. The learned judge considered that on the evidence it was the intention of the three brothers that the articles should provide that the shares of a deceased member should be offered to the other shareholders and that the facts necessary to support an action for rectification had been established, if the court had jurisdiction to order rectification. He held, however, that the court had no jurisdiction to rectify articles of association even though they do not accord with what is proved to have been the concurrent intention of the signatories at the moment of their signatures. After referring to the decision of Joyce, J., in *Evans* v. *Chapman*, *supra*, he considered the matter apart from authority and pointed out that the Companies Act (see s. 20 of the 1929 Act) provides that articles of association, when registered, shall bind not merely the members but the company, which had no existence at the time when, by mistake, those who put their signatures to the articles omitted to make in them a certain provision. "How can their mistake be put right as against the company which, when they made their mistake, had no existence at all, and when the statute says that the articles when registered shall bind the company? It seems to me that the effect of the statute on the company . . . is to exclude from applying to articles of association the jurisdiction of the court with regard to rectification.

The learned judge went on to mention further difficulties involved in an order for rectification of articles of association. If rectification were ordered the court ought to see that the articles registered with the registrar were made to conform with the order. But the court had no jurisdiction to order the registrar to correct articles of association and would not make an order which it had no power of enforcing. When an order is made confirming an alteration of objects or sanctioning a reduction of capital, the Act contains provisions (see s. 5 (6), s. 58 of the 1929 Act) for the registration of the order made by the court. Apart from this, the Companies Act provides that the register is open to inspection, that copies of the registered documents can be obtained by members of the public and that copies certified by the registrar to be true copies are admissible as evidence, and accordingly "it is of vital importance, if the articles of association are to be rectified, that the file should be altered so as to conform to the court's order. There is no machinery for that." For these reasons it was held that the court had no jurisdiction to rectify articles of association.

It may be observed that the difficulties in the way of ordering rectification would not arise if it were possible to procure rectification indirectly by means of an order on the members to pass a resolution altering the articles to conform with the original intention. This would not, of course, be an order for rectification which involves the court itself making the necessary alteration, but I do not see how an action could lie against the members for an order to pass the necessary resolution, and obviously not in a case where there were shareholders other than those original members who alone were parties to a common mistake.

A Conveyancer's Diary.

Costs of Marriage Settlements.

We have all, I think, seen in marriage settlements a clause to the effect that the trustees shall, out of the trust fund, raise and pay the costs of the negotiation, preparation, and stamping of the settlement, but not all of us will have realised its significance. The position at common law is discussed in *Helps* v. *Clayton* (1864), 17 C.B.N.S. 553. In the normal case where both parties to the marriage are of full age, each of them naturally instructs his or her own solicitor to act in regard to the settlement. And accordingly, each party is *prima facie* liable to his or her own solicitor for their respective sets of costs. But, by custom, the stamp duty falls to be paid by the husband, and he is also by custom liable to indemnify the wife against her solicitor's costs. There is, however, no doubt that the wife's solicitor is retained by her and not by the husband. Accordingly, it would follow that if the husband became bankrupt at a date before the wife's costs had been paid, she herself would have to pay them. In *Helps* v. *Clayton*, the wife was an infant and everything was done for her by her father in whose house she lived, including the retention and instruction of her solicitor. It was held that the employment of a solicitor in those circumstances was a necessary for which an infant could validly contract and that she had validly so contracted by her father as her agent. The case, as it then stood, was complicated by the law regarding the ante-nuptial debts of married women before the Married Women's Property Act, 1882, with which we are fortunately not concerned. But if such a case arose at the present day, I do not think there is any doubt that the wife would be primarily liable for her costs as being necessaries, and that the husband would be liable to indemnify her. It was indicated in *Helps* v. *Clayton* that the position was to be considered analogous to the preparation of a lease, where the lessor gets an indemnity for his costs from the lessee in an absence of a term to the contrary, but where, of course, the lessor has the primary liability for his own costs.

It appears, therefore, that in the ordinary case where the settlement is made without the assistance of the court, the

costs of neither party are payable out of the fund unless there is an express arrangement that they should be so. They are payable primarily by the parties respectively, but the husband is ultimately liable for the whole of them by reason of having to indemnify the wife. It follows, therefore, that it will normally be desirable to insert a provision about costs in the settlement, especially if the husband has no property at all (because it seems very harsh that he should have to pay these costs out of income, especially if they include a large stamp duty attracted by his wife's money) or if the husband has put substantially the whole of his capital into the settlement. Of course, if both parties have means and only the wife's fund is being settled, it will be equitable for the husband to bear the costs if he is taking any interest in the wife's fund. But it must be remembered that the basis of the common law rule is that before the Married Women's Property Act, the husband was going to get substantial direct benefits by the mere fact of marrying his wife, none of which benefits he gets nowadays.

In cases where the court is invoked the position is different, whether the court's intervention is required only by reason of the infancy of one or both parties, or because one or both parties is or are wards of court as well as being infants. The basis of this rule is to be found in a rather picturesquely worded anonymous case in 1828 (5 Russell 473). In that case Sir John Leach, M.R., was asked to sanction a settlement on a female ward who had married without the sanction of the court and also that the husband's costs, as well as those of the other parties, might be paid out of the fund. The learned reporter observes "the husband had no property, but there were not any circumstances of aggravated misconduct on his part." It was also stated that he did not know that the young woman was a ward. In spite of the fact that the husband was only guilty of the comparatively venial offence of having no money, the Master of the Rolls "was at first not inclined to allow the husband his costs; but, a case having been mentioned in which Lord Eldon had made a similar order, he at length directed that the husband's costs should be paid out of the fund." This case was followed in *Re De Stacpoole*, 37 Ch. D. 139. In that case the female infant was not a ward and it is not stated that the husband had no money. The last fact is, I think, to be noticed because the impecunious husband in the anonymous case would have been quite unable to pay the costs and it would have been very hard on the solicitor; whereas, so far as I can see, there was no reason to think that the husband in the latter case would have been unable to pay the costs if he had been ordered to do so. It is true, however, that he did not bring anything into settlement but yet got the second life interest in the wife's fund. Counsel for the husband appears first to have sought to overthrow the ordinary common law rule of *Helps* v. *Clayton* on the ground that rules of this sort had lost their basis by reason of the Married Women's Property Act which had then recently been passed. He also quoted the anonymous case in "Russell," and the court's judgment rested only on his second point. As no attempt has since been made to challenge the rule in *Helps* v. *Clayton*, I do not think that there is the least likelihood that it would succeed almost sixty years after the Married Women's Property Act.

The position regarding the lien of the various solicitors for their costs is also worth consideration. It would seem that there is not any effective lien for these costs. The basis for this proposition is *Re Lawrance* [1894] 1 Ch. 556. In that case certain solicitors drew up the settlement and ancillary documents on the instructions of the husband. They rendered him a bill for about £90, most of which consisted of the stamp duty on the settlement and other disbursements. The husband then went bankrupt without paying the £90. The question in the case was whether in these circumstances the solicitors had a lien upon the settlement in reliance upon which they could withhold the instrument itself from the trustees until the costs were paid. There had been an authority in 1858 (*Re Gregson*, 26 Beav. 87) in favour of such a lien, but there had been several cases against it, and Kekewich, J., refused to accept *Re Gregson* as correctly stating the law. The learned judge pointed out that the trustees would not be personally liable for any of the costs of preparation in the absence of an express retainer by them, which he said he had never seen. They are only the clients of the solicitors of either party of the marriage in the sense that it is recognised that they are to be made entitled to the property and thereupon will hold it upon the trusts of the settlement. It was held that, if a solicitor intends to enforce the lien as against the trustees, he must expressly communicate that intention to the trustees before he becomes their solicitor for the purposes of the negotiation of the settlement. The position of trustees in the case of a settlement is to be sharply distinguished from that of trustees for debenture-holders. It has been held that the solicitor for trustees for debenture-holders has got a lien upon the trust instrument as against them for his costs incurred before the execution of the trust instrument. It is true that, as between trustees for debenture-holders and their beneficiaries, the trustees are in a fiduciary position, just as trustees of a settlement are as between themselves and their beneficiaries. But the trustees of a settlement have no interest in the property, except what the beneficiaries confer upon them. The trustees for debenture-holders, on the other hand, get their title not from the beneficiaries, but from the concern which is issuing the debentures, and their title is that of mortgagees. It could not, I think, be suggested that the solicitors for a mortgagee would have no lien upon the mortgage deed by reason of the fact that the mortgagor is normally liable for mortgagee's costs as well as for his own, and exactly the same considerations apply to the costs of a trustee for debenture-holders.

The upshot seems to be that the prudent solicitor will secure that the settlement contains the provision to which I referred at the outset. If that provision is present, the trustees will have a mandatory duty to pay the costs out of the fund, and there will accordingly be money to meet them. Not only that, but, since the trustees have a duty, it will be possible for all the solicitors concerned to press them to fulfil it at an early date. Unless the husband is very rich, it is unlikely that he will pay costs of this sort in the course of the same year as his marriage, if he has to pay them himself. And on the whole it is fairer to all parties that the costs should be paid out of the fund rather than borne by one of them for reasons whose point vanished at the same time as the good old rules regarding the status of married women.

Landlord and Tenant Notebook.

Withholding Rent.

THE recent case of *Camden Nominees, Ltd.* v. *Forcey*, reported in *The Times*, of 22nd, 23rd, 24th and 28th February, serves to remind us of the nature of rent. No new illustration has been afforded, for while the plaintiffs, landlords of a block of flats, sought to restrain the defendants from inducing other tenants to refuse to pay rent, the substantial issue was whether in fact the activities complained of had occurred, and whether they constituted inducement. True, it was alleged that the plaintiffs had failed to observe an alleged duty to heat the flats, and they did plead that they had not failed in any duty to their tenants; but the defendants do not appear to have contended that, if there were such failure, it would be proper for them to suggest withholding of rents.

Indeed, unless a lease or tenancy agreement expressly so provides, the cases in which a tenant may withhold or deduct anything from rent are few and are fairly well defined. Statutory authority is, of course, conferred by certain revenue

enactments by virtue of which land tax and Schedule A income tax are collected from the tenant, a practice which dates from the days of the Civil Wars, when many landowners accompanied the king into exile; and rating law has adopted this principle for certain occasions when, rates being in arrear, authorities may serve upon "any person paying rent in respect of that hereditament, or any part thereof, to the person from whom the arrears are due, a notice stating, etc., and requiring all future payments of rent . . . to be made direct to the rating authority until such arrears have been duly paid, and such notice shall . . . operate to transfer to the rating authority the right to recover, receive and give a discharge for such rent" (Rating and Valuation Act, 1925, s. 15).

Apart from statute, the tenants have in some cases been able to avail themselves of somewhat liberal interpretations of the notion of implied request. The commonest example is payment of rent due to a superior landlord who threatens to distrain. The oldest authority on this is *Sapsford* v. *Fletcher* (1792), 4 T.R. 511, in which the mesne landlord took his stand on the principle that no man can make another his debtor by voluntarily paying the debt of that other. This argument failed because of the threat of distress which negatived voluntariness. This authority was applied to a payment made to an annuitant who had a power of distress, in *Taylor* v. *Zamira* (1816), 6 Taunt. 524, though the landlord was not personally liable for the annuity which had been granted. And as regards distress for rent, when statute law in the shape of the Lodgers' Goods Protection Act, 1871, and the Law of Distress Amendment Act, 1908, conferred privilege on the goods of lodgers, undertenants and others, they made written declarations setting out, among other things, what rent was owing and when, a condition of such privilege. The former Act did not concern itself to any great extent with what should happen after, being content merely to authorise the lodger to pay any of his arrears over to the superior landlord. But the 1908 Act provides in s. 1 (1) that the declaration shall contain an undertaking to pay to the superior landlord any rent so due or to become due, till the distress is satisfied; and s. 3 deals specifically with the consequences, enacting that any of these payments shall be deemed to be to the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but, where the undertenant or lodger has, in pursuance of any such undertaking as aforesaid, paid any sums to the superior landlord, *he may deduct* the amount thereof from any rent due or which may become due from him to his immediate landlord. The same applies when payments are made under a notice given under s. 6, which enable superior landlords to collect from sub-tenants without distraining.

On the question whether a lease expressly provides for reduction, there have been a number of border-line cases which must, I think, be ascribed to defective draftsmanship by our ancestors. In *Dallman* v. *King* (1837), 4 Bing. N.C. 105, the plaintiff took premises at a rent of £250 a year, payable quarterly, the first payment to be made on the 25th December next ensuing, which was 25th December, 1835; he also covenanted to lay out £200 on some building, alteration and repair work, which was to be inspected and approved by the landlord and done in a substantial manner; he was to be allowed the £200 and he was to be at liberty to retain it out of the first year's rent. The landlord did not apparently claim the first quarter's rent or those which the reddendum would have made due on the next two quarter days; but when a year had elapsed, he assessed the value of the work then done at £115 17s. and levied a distress for the difference between that amount and £250. In an action for excessive distress, the jury found that the work had been substantially done, but that the defendant had not approved it. The court held that it was never intended that the right to disapprove should be exercised capriciously which, as Tindal, C.J., said, would go to the destruction of the thing granted. The question whether the defendant was not entitled, by virtue of the reddendum, to distrain, leaving the plaintiff to bring an ordinary action, does not seem to have been examined. But in *Davies* v. *Stacey* (1840), 12 Ad. & El. 506, a replevin action in which it appeared that the lease provided for an "allowance of the road to the Six Bells Yard to be made as usual" and that the occupier of the demised premises had been in the habit of paying the keeper of the inn referred to £5 a year for the use of a road, and being reimbursed by the defendant, it was held that this amounted to a "covenant for allowance" the existence of which was no bar to a distress for the full amount of the rent. The authorities of *Sapsford* v. *Fletcher* and *Zamira* v. *Taylor*, *supra*, were distinguished in that the deductions in those cases concerned direct charges on the premises demised.

When a landlord under a covenant to repair fails in that duty or when his tenant thinks he has so failed, the tenant is inclined to assume that withholding of rent is the best way to arouse in the landlord a sense of duty. There is no doubt that this often works; but when it does not, the tenant is disillusioned either by his legal adviser or by a court of law. The last instance was, I believe, *Cruse* v. *Mount* [1933] Ch. 278, in which, however, the tenant was under illusions both as to the landlord's liability for repairs and as to the effect on his own liability for rent.

The Legislature has, indeed, given some countenance to the practice of regarding obligations as interdependent (when they are not) by a provision in the Rent, etc., Restrictions Acts. Section 2 (2) of the 1920 Act conferred on a tenant, whose rent had been increased on the ground of the landlord's liability to repair, the right to apply for an order suspending the increase and also the 15 per cent. increase, on the ground that the house was not fit for habitation or otherwise not in a reasonable state of repair. The 1923 Act by s. 3 took the matter further: for one thing, the county court could also suspend liability for arrears of rent; but also, the tenant might never have to trouble the court, for if he could obtain from the sanitary authority a certificate stating that the house was not in a reasonable state of repair and specifying what should be done to put it in the required state, and serve a copy on the landlord, the burden of proving the contrary was placed upon the latter. Shilling certificates of this description have proved very effective weapons in some places.

Another question worth examining is this; suppose the landlord fails in a duty to repair, and the tenant executes the necessary repairs himself, may he deduct the cost from rent? The academic view is, no doubt, that he should bring an action for the difference in value between the term with the premises as they are and its value if the obligation had been observed. But there is authority, and indeed direct authority, that the tenant may take the course suggested above, the case in point being *Beale* v. *Taylor* (1590), 1 Leon. 237. The proposition was accepted without question in a more recent county court case, but it would be interesting to see it raised in the superior courts, one side submitting that a decision arrived at in Queen Elizabeth's reign, reported by an obscure reporter and not used since, should be consigned to the limbo of forgotten law, the other pointing out that an authority not challenged for some three-and-a-half centuries was entitled to respect if only on account of its age.

The Home Secretary has made an Order under the Administration of Justice (Emergency Provisions) Act, 1939, altering the hours of sitting of the metropolitan police courts. The Order comes into operation on the 4th March. From that date the metropolitan police courts (other than Greenwich and Woolwich police courts), which at present sit from 9.30 a.m. until 4.30 p.m., will sit from 10 a.m. until 5 p.m. The Greenwich court will sit from 10 a.m. until 1 p.m. and the Woolwich court from 2.30 p.m. until 5 p.m. The courts may sit until a later time if the state of business requires it, and it is also provided that a court may be closed at 4 p.m. if all the business for that day has been concluded.

Our County Court Letter.

ENCROACHMENT ON FRONTAGE.

In a recent case at Kidderminster County Court (*Elwood* v. *Green*) the claim was for £30 as damages for trespass and an injunction. The parties owned adjoining plots of land in Chester Road South, both plots having been originally one parcel of land. In 1926 the plaintiff's frontage was 30 feet and the defendant's 45 feet. In 1937 the plaintiff wished to sell her plot, when the above measurements were found to be 27 feet and 48 feet respectively. At Easter, 1938, a stake was found, which had been driven into the ground 3 feet inside the plaintiff's boundary. In June, 1939, the plaintiff desired to sell her land by auction, but, owing to the dispute over the boundary, the lot was withdrawn and costs were thrown away. A correct boundary fence was erected in July, 1939, but was removed soon afterwards. Evidence was given that the defendant had cut the wires, and had used the posts for firewood. His Honour Deputy Judge H. A. Tucker granted the injunction, and gave judgment for the plaintiff for £5, but with costs on the higher scale.

HAIRDRESSER AND CUSTOMER.

In *Lawrence* v. *Petrie*, recently heard at Weston-super-Mare County Court, the claim was for damages for negligence. The plaintiff's case was that she had been a customer at the hairdressing establishment of the defendant, who suggested that the plaintiff should try a new method of tinting her hair. An appointment was accordingly made, and the treatment was applied. The next day the plaintiff suffered from irritation of the scalp and neck, which was diagnosed as dermatitis. This was alleged to have been due to the defendant's omission to apply the skin test, which was prescribed by the manufacturers of the preparation used in the tinting. The special damage was doctor's bill, £7 10s.; nursing, £1 10s.; lotions, etc., £8 14s. 2d. The defendant's case was that she had had seven years' experience as a hairdresser, and was about to apply the test, viz., by putting a spot of dye on a cleansed portion of the skin, behind the plaintiff's ear, and leaving it for twenty-four hours. The plaintiff, however, was alleged to have refused this test, as she was in good health and wished to undergo the process without delay. The only witness, apart from the parties, was the defendant's assistant, who gave corroborative evidence as to the plaintiff having decided to take the risk, after being appraised of its existence. His Honour Judge Wethered observed that the defendant was a competent and careful practitioner. Unfortunately, however, the plaintiff had an unusually susceptible skin, of which no one was aware, and inflammation had resulted. Judgment was given for the plaintiff for £50, with costs on Scale B, payable at 10s. a month.

THE ENFORCEMENT OF MORTGAGES.

In a recent case at Cirencester County Court (*Cripps* v. *Fox*) an application was made for leave to exercise a power of sale under a mortgage, pursuant to the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*a*) (iv). The applicant was the secretary of the Cirencester Conservative Benefit Society, and his case was that, in 1936, the respondent had bought some property in Gloucester Street for £400. As a member of the society, he had been granted a loan of £459, to be repaid in quarterly instalments of £10 11s. 3d. The instalments of September and December, 1939, were unpaid and another instalment was due in March, 1940. The case for the respondent was that his business, viz., a butcher, had become increasingly difficult since the crisis of September, 1938. He lived on the premises, and took £3 a week from the business. An offer was made of £5 down. His Honour Judge Kennedy, K.C., made an order for sale, to be suspended so long as the respondent paid 25s. a week until payment off of the arrears, the said weekly sum being a provision for the inclusive payment of a portion of the arrears and the amount due on current quarterly instalments.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

ACCIDENT TO GOVERNESS.

In *Masters* v. *Horlick* at Frome County Court, the applicant was a governess, and her case was that on the 19th January, 1939, she had been kicked on the knee by the daughter (aged nine years) of the respondent. Another kick was received on the same knee on the 20th January, and again on the 29th January, whereupon the applicant left. The knee became swollen and painful, necessitating hospital treatment, and osteo-arthritis developed. Compensation at 25s. a week was paid to the 15th May, on a pre-accident wage of £2 10s., of which £1 represented board and lodging. The case for the applicant was that a kick would accelerate the complaint, and that, as she could only teach sitting down, she was still partially incapacitated. The case for the respondent was that the osteo-arthritis was in both knees, and it was improbable that it could be caused, or made worse, by a kick from a child. In any case the applicant was fit to resume duty, and the incapacity had ceased. His Honour Judge Kirkhouse Jenkins, K.C., sitting with a medical assessor, held that the applicant could teach sitting at a table, but could do no work involving standing, nor gymnastic work. There was no evidence that £2 10s. was a special rate of remuneration, and, on the present earning capacity of the applicant, an award was made in her favour of 15s. a week from the 15th May, until such time as the matter might be reviewed, with costs.

DIMINUTION OF COMPENSATION.

In *Powell Duffryn Associated Collieries, Ltd.* v. *Jones* at Merthyr Tydfil County Court, an application was made for the termination or diminution of compensation. In December, 1936, the respondent had sustained a fracture of the leg bone at the ankle, and was paid full compensation until September, 1937. The amount was thereafter reduced to 15s. 11d. as for partial incapacity, and in August, 1939, on an application for termination, there was a conflict of medical opinion as to the interpretation of some X-ray photographs. The matter was therefore referred to a medical referee. On the report of the medical referee, His Honour Judge Clark Williams, K.C., found that the respondent was still incapacitated, owing to a slight limitation of movement in the right ankle joint, and to long disuse of the calf muscles and muscles of the leg. This incapacity did not exclude the respondent from general employment of a skilled nature, and his earning capacity was therefore assessed at £3 a week, and his loss of earning capacity at 16s. 10d. An award was made accordingly, viz., by the reduction of the weekly sum to 8s. 5d. as from the 19th August, with costs to the applicants on Scale B.

LUMP SUM FOR RUPTURE.

In *Bates* v. *Townsend Hook & Co., Ltd.*, at Maidstone County Court, the applicant was aged fifty-three, and his case was that he had been employed for fifteen years as a reelerman in the respondents' paper factory. On the 20th August, 1937, he strained his shoulder and sustained a rupture. The latter allegation was not admitted by the respondents; alternatively, if the applicant had a rupture, he had given no notice of it, and it was not due to the accident. He had been away from work until October, 1937, but he then returned to work until March, 1939, after which he alleged that he was totally incapacitated by the rupture. An agreement had been reached for the case to be settled on the following terms: The applicant to receive £57 in respect of arrears of compensation at 30s. a week, and £100 in full and final settlement for the injury, plus £2 for a new truss. The respondents also entered into an honourable agreement to employ the applicant at some suitable work at not less than 1s. 4½d. an hour, instead of the usual rate of 1s. 6d. His Honour Judge Clements approved the agreement, and ordered the same to be recorded.

Practice Notes.

REFEREE: LANDLORD AND TENANT.

The tribunal for the purposes of Part I of the Landlord and Tenant Act, 1927, is, generally speaking, the county court (s. 21 (1)). The matter—unless the parties otherwise agree—then stands "referred for enquiry and report" to one of the panel of referees selected by the county court, as if the matter had been referred with consent under the County Courts Act, 1919, s. 6 (s. 21 (2)). Section 6 of the Act of 1919 has substantially become s. 90 in the Consolidating Act of 1934. On consideration of the "report," the judge may give such judgment "as may be just." It follows that the tribunal which ultimately "hears and determines" the matter is not the referee, but the county court judge. In *Simpson* v. *Charrington & Co., Ltd.* [1934] 1 K.B. 64, 83, Greer, L.J., said: "It is only for convenience that the matter is referred in the first instance to a referee for enquiry and report, but on receiving the report, . . . the county court is bound to exercise its own judgment on all questions of law or fact, and though it would be in most cases unwise for the county court judge to arrive at a conclusion different from that of the referee on the question as to the weight to be attached to the evidence of witnesses who have been heard and seen by the referee and have not been seen and heard by the judge, still it is to the judgment of the latter on all questions of law or fact that the statute refers the action."

In *British & Argentine Meat Co., Ltd.* v. *Randall and Others* (1939), 4 All E.R. 293, the tenants, paying £200 per annum, had applied for a new lease. The matter was duly referred and the report of the referee came before the county court judge. The landlords thereupon tendered a letter from a co-operative society—written after the report—offering to take the premises for ninety-nine years at £400 per annum, this being the "goodwill rent" that the referee had found. The judge refused to admit the letter, or even to look at it. A butcher, paying £200 per annum, would have made an annual profit of £300. The Court of Appeal held that the judge should have admitted the letter in evidence; on the figures no right to compensation arose and therefore no right to a new lease.

The hearing before the judge is not an appeal but a hearing by a tribunal of first instance. Each party has the right to submit relevant evidence which the court has no power to exclude unless there is some statutory provision to the contrary (*per* Luxmoore, L.J., at p. 308).

> "The inherent right of a litigant to submit relevant evidence to the court can only be taken from him by express statutory enactment or with express statutory authority. I can find no trace of either in the present case . . ."

Atkinson, J., arrived at the same result by a different route (at p. 309).

Reviews.

The Law of Food and Drugs. By G. M. Butts, Solicitor of the Supreme Court. 1940. Demy 8vo. pp. lxxii and (with Index) 603. London: The Solicitors' Law Stationery Society, Ltd. Price 35s. net.

This is a work which may be described as monumental. The author has surmounted the difficulty caused by the fact that the Food and Drugs Act, 1938, although a consolidating statute, is not a complete code for the regulation of the sale, or exposure and preparation for sale, of foods and drugs. In Pt. I of the book, ninety pages are accordingly devoted to a survey—which is concise without being sketchy—of the whole law of food and drugs. Section VII of this part deals with twenty specific articles of food, ranging—one notes with interest—from ice-cream to horseflesh. The Food and Drugs Act, 1938, is the culmination of a series of statutory provisions, dating from the reign of Henry VIII, and scattered over thirty-six Acts. The date of its commencement was the 31st October, 1939, and it is annotated, section by section, in Pt. II of the book, comprising 227 pages. Copious footnotes enable the practitioner to observe at a glance the relevant decided cases, and cross references to other sections of the Act, in connection with the subject-matter of each section. Nearly 400 cases are considered in their respective contexts, and it appears that no aspect of this complicated subject has been overlooked. The Royal Assent was given to the Act on the 29th July, 1938. It could not then have been foreseen that, at the prescribed date for commencement of the Act, the country would be in the throes of a European War. This circumstance has magnified the author's task by imposing upon him the necessity of assimilating into the book the numerous emergency provisions, contained in statutory rules and orders. The effect of these is adequately considered in Appendix V. All but the youngest readers will be grateful for the contents of Appendix IV, viz., comparative tables showing the sections of previous Acts reproduced or represented by each of the sections of the present Act. By reason of its wide scope (illustrated by Appendix II—"Other Statutes") this work can be confidently recommended as a standard text-book. It will be equally useful not only in local government offices, but also in the offices of the author's fellow practitioners, and in the chambers of the other branch of the profession.

Books Received.

The Conveyancer's Year Book, 1940. Vol. 1. By Sir Lancelot H. Elphinstone, of Lincoln's Inn, Barrister-at-Law. Demy 8vo. pp. lxxiv (with Index) and 325. London: The Solicitors' Law Stationery Society, Ltd. Price 10s. 6d. net.

The Solicitors' Handbook of War Legislation. First Supplement. By S. M. Krusin, B.A., and P. H. Thorold Rogers, B.A., B.C.L., Barristers-at-Law. 1940. Demy 8vo. pp. xv and (with Index) 143. London: The Solicitors' Law Stationery Society, Ltd.; Stevens & Sons, Ltd.: Sweet and Maxwell, Ltd. Price 7s. 6d. net.

Law in the Light of History. Book II. England in the Middle Ages. By C. H. S. Stephenson, LL.D., and E. A. Marples. 1940. Demy 8vo. pp. xi and (with Index and Maps) 316. London: Williams & Norgate, Ltd. Price 18s. net.

Modern Factory Lighting, including Special Wartime Requirements. 1940. Demy 8vo. pp. viii and 139. Issued jointly by the British Electrical Development Association and the E.L.M.A. Lighting Service Bureau. Price 8s. 6d. net.

Industrial Law. By H. Samuels, M.A., of the Middle Temple, Barrister-at-Law. Second Edition, 1940. Demy 8vo. pp. xxi and (with Index) 249. London: Sir Isaac Pitman and Sons, Ltd. Price 15s. net.

The Municipal Year Book and Encyclopædia of Local Government Administration, 1940. Edited by James Forbes. Demy 8vo. pp. lxiv and 1350. London: The Municipal Journal, Ltd. Price 35s. net.

Criminal Statistics, England and Wales, 1938. 1940. pp. xlvii and (with Index) 237. London: H.M. Stationery Office. Price 4s. net.

Complete Practical Income Tax. By A. G. McBain, Chartered Accountant. Eleventh Edition, 1940. Demy 8vo. pp. xxiii and 370. London: Gee & Co. (Publishers), Ltd. Price 8s. net.

Free Legal Advice in England and Wales. A report on the organisation, methods and future of Poor Man's Lawyers, prepared for the Executive Committee of Cambridge University Settlement, Camberwell, London, S.E.5. By J. Mervyn Jones, M.A., LL.B., of Gray's Inn, Barrister-at-Law. With a Preface by The Rt. Hon. The Viscount Maugham. London: Cambridge University Settlement. Price 1s. 2d. post free.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Hire-Purchase of a Car.

Q. 3680. A agrees to purchase a car from B on a representation made by B that it is a 1938 model. The purchase is to be on hire-purchase terms, so that the actual transaction is completed by means of a hire-purchase agreement whereby a finance corporation sells the car on hire-purchase terms to A, and B is not a party to the transaction at all. The hire-purchase agreement contains a clause excluding all warranties. Has A any claim against B, since, but for B's representation, A would never have considered taking the car nor entering into the hire-purchase agreement? The car is in fact an earlier make than the one described.

A. It is a question for the court whether the stipulation that the car should be a 1938 model was a condition or a warranty. The authorities are in favour of it being a condition (*Wallis* v. *Pratt* [1911] A.C. 394, and *Ronaasen* v. *Evans, etc., Ltd.* (1923), 155 L.T. Jo. 322). The case is covered by *Wallis, Son & Wells* v. *Pratt, supra*, and *Baldry* v. *Marshall* [1925] 1 K.B. 260 (see also *per* Lord Wright in *Cammel Laird & Co.* [1934] A.C. 402, at p. 432). These are decisions that the buyer (or in this case the hirer) may return the goods or at his option claim damages as for breach of warranty even where there is a clause excluding liability for warranties, if the breach is actually a breach of condition. The action should be brought against the hire-purchase finance company.

Agreement as to Windows.

Q. 3681. Our clients own land adjoining which a cinema is being erected with windows overlooking our clients' land. So that our clients may not have to erect an obstruction on their land to prevent the cinema owners from acquiring a right to light over it, an acknowledgment is being obtained from the cinema owners. The operative part of this document contains cl. 1 on p. 346 of vol. 6 of the "Encyclopædia of Forms and Precedents" (2nd edition), and cl. 5 on p. 351 of this volume. The cinema owners refuse to pay an acknowledgment rent and to have notice of the acknowledgment endorsed on the conveyance to them. The acknowledgment is being done in duplicate. In order to bring this acknowledgment to the notice of a future purchaser from the cinema owners, who may not have notice thereof (e.g., by concealment of the acknowledgment or loss thereof), can it be registered as a land charge, and, if so, in what class do you suggest that it be registered?

A. The agreement, as far as it contains negation of rights of this cinema owner, appears to come under the head of a restrictive covenant, and as far as it gives a right to the adjoining owner to prevent the acquisition of an indefeasible right in the cinema owner to be in the nature of an equitable easement. It may apparently be registered as both. Registration will not bind a prior mortgagee.

Death Duties on Bequest for Maintenance of Grave.

Q. 3682. The will of a testatrix, who died nearly three years ago, contained the following bequest: "I Bequeath to my said Executors and Trustees the sum of One hundred pounds and I request them to invest the said sum (with power from time to time to vary any such investment) and to apply the income thereof in the maintenance and upkeep of my grave." She gave her residuary estate as to one moiety to A, and as to the remaining moiety to B absolutely. With the £100 the executors purchased 2½ per cent. Consols to provide the income for the maintenance and upkeep of the grave. A died recently and the Estate Duty Office claim estate duty on one half of the £100 which (they contend) passed on A's death to B by survivorship. They give the following grounds: (A) That the clause set out above did not impose a trust and A and B were therefore entitled to the £100 beneficially; (B) that in the absence of words of division in the gifts A and B took interests analogous to those of joint tenants: (C) that on A's death the sum passed to B by survivorship; (D) that A was "competent to dispose" of the half-share and that A's executors are accountable for the estate duty now claimed. We shall be obliged if you will give us your opinion. Presumably, if the claim for estate duty is valid it may be followed by a claim for succession duty on the half-share. It may be added that the income tax authorities also assessed the income from the Consols, and income tax has been paid on such income up to date and will be payable in future, the income not being exempt from income tax.

A. As regards bequests of this type, see p. 266 of "Dymond's Death Duties," 8th ed. It would appear from the statement in "Halsbury," vol. 4, p. 129, that the bequest in this case is invalid as involving a perpetuity and therefore the fund is in the same position as the residuary estate, and one half forms part of A's estate and is liable on his death to death duties as such. It is not understood how a joint tenancy arises under which B becomes entitled as survivor. If the bequest failed the fund presumably fell into residue. In any case, estate duty would not be affected and the question whether legacy duty is payable under A's will or succession duty under a joint tenancy would not be material unless different rates are involved.

Landlord and Tenant (War Damage) Act, 1939.

Q. 3683.—1. In view of the Landlord and Tenant (War Damage) Act, 1939, and the release from the obligation to repair granted to tenants in case of war damage, and their ability to disclaim leases, is an advance by way of mortgage on the security of freehold property still a trustee investment?

2. Does an owner-occupier come within the provisions of s. 1 of the above Act and in the event of war damage become relieved of the covenant entered into by him with his mortgagee to keep the premises in repair?

A.—1. A trustee should not invest in mortgages of freehold which are of a speculative or insecure character. In considering whether a mortgage of freehold to-day is of such a character, the district in which the land is situated and the likelihood of war damage is a relevant consideration. As a matter of practical precaution a trustee should avoid such investments at the present moment, particularly in urban areas or near possible military objectives. Mr. Justice Farwell, on 15th December, 1939, in *Moorgate Estates* v. *Trower*, 84 Sol. J. 26, took the view that a trustee might well consider it inadvisable at the moment to make such investments unless fully protected by an air-raid insurance, which it is no longer possible to effect.

2. A mortgage is a disposition which creates an interest in land and comes within s. 1 of the Landlord and Tenant (War Damage) Act, 1939, so that an obligation to repair imposed thereunder on any person will not extend to the making good of war damage.

To-day and Yesterday.

LEGAL CALENDAR.

26 FEBRUARY.—On the 26th February, 1814, Richard Richards became a serjeant-at-law on his appointment as a Baron of the Exchequer. It is said that the offer of the judgeship was made to him in an unusually informal way. He was appearing in a case before Lord Eldon when the Chancellor sent him down a note: "Dear Taffy, What do you say to a puisne Baron?" Richards is supposed to have accepted on the understanding that he should become Chief Baron when that place fell vacant. He achieved this promotion in 1817.

27 FEBRUARY.—Mistress Anne Line, who was executed at Tyburn, on the 27th February, 1601, was a victim of the penal laws against the Roman Catholics. Her only crime was harbouring a priest, for the police had broken into her house at the very moment Mass was beginning. Her health was very weak and she had to be carried to her trial at the Old Bailey in a chair, but she behaved to the end with the highest courage. Two priests were hanged immediately after her, and while her body was yet suspended, one of them cried: "O blessed Mistress Line who hast now happily received thy reward! Thou art gone before us but we shall quickly follow thee to bliss if it please God."

28 FEBRUARY.—On the 28th February, 1834, Mr. Baron Williams was appointed to the bench. Soon afterwards he transferred from the Court of Exchequer to the Common Pleas. His work at the Bar had been largely confined to the criminal courts, and as a judge his ignorance of points of ordinary civil practice at first caused some confusion, though he soon learned his business well. He was very eccentric in his manner and had an extremely forcible way of expressing himself. Cordial and kind, he was loved by the profession and was always "Johnny" when he was not "my lord."

29 FEBRUARY.—On the 29th February, 1868, Lord Cairns became Lord Chancellor in the ministry formed by Disraeli on the resignation of Lord Derby. Lord Chelmsford, the former occupant of the Woolsack, was compelled to vacate it, being dismissed, he complained, "with less courtesy than if he had been a butler." It is only fair to say, however, that the deposed Chancellor had taken office in 1866 on the understanding that he should in time make way for Cairns, whose services were then required as Attorney-General. Cairns resigned with Lord Derby in 1869, but was again Chancellor in 1874.

1 MARCH.—On the 1st March, 1787, a woman named Sophia Pringle was hanged in the Old Bailey for forgery. For two hours before her execution she had strong convulsive fits. The Sheriff feared that this would interrupt the devotions of the eight men who were doomed to leave the world at the same time. She was accordingly kept within the prison walls till nearly 8 o'clock. She fainted when the time came for her to leave her cell and had to be supported by two men till the drop fell. She wore plain mourning with a veil over her face. "Her deplorable situation affected the spectators with the most poignant grief, everyone present lamenting her miserable end."

2 MARCH.—On the 2nd March, 1793, a baker was convicted before the Mayor of Rochester for selling eleven loaves several ounces under weight to eleven soldiers of the North Hants Militia. Half the fine inflicted was offered to them, but they refused it, asking the Mayor to give the money to the poor, and saying: "We do not prosecute for money but for justice." "This becoming conduct in the soldiers is made known in credit to the regiment and to expose the unfortunate wretch who wished to deprive them of their legal allowance of bread."

3 MARCH.—On the 3rd March, 1896, Adolf Beck was tried at the Old Bailey before the Common Serjeant for frauds on various women.

THE WEEK'S PERSONALITY.

The man whose monument is the Court of Criminal Appeal is not likely to be forgotten in legal history. The obscure little Norwegian, Adolf Beck, who lived in England and South America as a broker, a concert singer, a revolutionary soldier and a mine owner, was the instrument of one of the greatest reforms of our time. The things he strove for came to nothing. The fantastic schemes, the grandiose promises, the optimistic speculations which were his life and which made him pour into all manner of gold, silver and tin mines, his own money and that of any acquaintances who were not proof against his persuasions, brought no return. But his years of unmerited suffering in prison, convicted of the crimes of another through the most extraordinary muddle of mistaken identity, brought immortality to him and justice to hundreds who would otherwise have remained wrongfully condemned. The evidence of the numerous women who unhesitatingly identified him as the man who had defrauded them of their jewellery would have misled any jury. It was eight years from his conviction in 1896 that his name was finally cleared and he received £5,000 compensation.

THE MAN THEY COULD NOT HANG.

A daily paper in its correspondence columns recently dealt with the case of the man whom the executioner could not hang. Though fifty-five years have passed since young John Lee stood on the scaffold at Exeter to expiate the crime of which he had been convicted, the case is still remembered with a marked interest. The murder of a wealthy and pious old lady, found in the middle of the night in her burning dining-room with her head battered and her throat cut, had been brought home by the verdict of a jury at the Devon Assizes to a young man who was a servant in her house. After a show of complete indifference during the trial he had vehemently protested his innocence at the death sentence. Pale but erect he walked to the scaffold and when the rope was adjusted the executioner drew the bolt. Nothing happened. The warders stamped on the trap-door but it remained immovable and after six minutes of effort the rope was removed while the mechanism was overhauled. Twice more the same attempts were made and at last when the Governor of the prison himself seemed on the verge of collapse, the condemned man, now with the face of a corpse was taken back to his cell. He was reprieved and kept a prisoner till 1907. The failure of the drop is supposed to have been caused by rain on the previous night affecting the woodwork.

BITING PROPENSITIES.

During the argument of that great case, in which the Court of Appeal recently presented the camel with the freedom of England declaring it a domestic animal here no less than in Arabia or the Sahara, counsel against the animal was laying great stress on its alleged "biting propensities," when Lord Justice MacKinnon intervened to say: "We all have biting propensities." I suppose that if, as Lord Justice Scott recalled during the same case, "man bites dog" is news, "judge bites barrister" would receive an equally warm welcome from the editors, but the nearest thing to "biting propensities" of which I ever heard in the superior courts, was the trick of Chief Baron Palles who, in moments of impatience, had a gesture of the head which looked like an attempt to bite his left ear. There was indeed once a Master who suffered from fits. One day it happened that a litigant in person, having dealt with the facts of his case, produced a pile of books saying: "And now, Master, I propose to deal with the law." The Master instantly had a fit and bit him in the leg. At the time that was regarded as the ideal way to deal with a layman arguing a point of law.

Notes of Cases.

Judicial Committee of the Privy Council.

Wallace-Johnson *v.* **R.**

Viscount Caldecote, L.C., Lord Thankerton, Lord Alness, Lord Romer and Sir George Rankin.
11th December, 1939.

SEDITION (WEST AFRICA—GOLD COAST)—"SEDITIOUS INTENTION"—WHETHER EXTRINSIC EVIDENCE OF NECESSARY—INCITEMENT TO VIOLENCE NOT ESSENTIAL INGREDIENT OF OFFENCE—CRIMINAL CODE (GOLD COAST) 1936 REVISION, s. 326 (2) (*b*), (*e*).

Appeal by special leave from a judgment of the West African Court of Appeal (Gold Coast Session).

The appellant was tried upon an information containing two counts: the first charging him with unlawfully publishing a seditious writing concerning the Gold Coast Government contrary to s. 330 (2) (*b*) of the Criminal Code of the Gold Coast Colony (Chapter 29); and the second with unlawfully having in his possession documents containing seditious writing of and concerning the Government of the Gold Coast contrary to s. 330 (2) (*e*). The appellant was convicted by the Chief Justice sitting with three assessors on both counts, and was sentenced to pay a fine on the first count; no punishment was inflicted on the second count. An appeal to the West African Court of Appeal was dismissed. The writing which was the subject-matter of the charges was part of an article alleged to constitute an attack on the Government, and published in a newspaper circulating in the Gold Coast Colony. The appellant pleaded not guilty, but admitted the writing and publication of the article. His defence was that the article was not seditious and that it was not calculated to bring the Government of the Gold Coast Colony into hatred and contempt. (*Cur. adv. vult.*)

LORD CALDECOTE, L.C., giving the judgment of the Board, said that it was not really in dispute that the appellant had the Government of the colony in view when he wrote the article, and that it referred to legislation and events generally in the colony. There was no evidence of any outbreak of violence or of any manifestation of hostility to the Government of the colony as a result of the article. It was argued for the appellant that the prosecution could not succeed unless the words complained of were themselves of such a nature as to be likely to incite to violence, and unless there were positive extrinsic evidence of seditious intention, reliance being placed on the summing up by Cave, J., in *R.* v. *Burns*, 16 Cox C.C. 355, quoted at length in "Russell on Crime," 9th ed., pp. 89–96. Their lordships threw no doubt upon the authority of those decisions; but the present case had arisen in the Gold Coast Colony, and the law applicable was contained in the Criminal Code of the colony. It was contended that the intention of the Code was to reproduce the law of sedition as expounded in the cases to which their lordships' attention was called. Undoubtedly the language of the section under which the appellant was charged lent some colour to that suggestion. It was, however, in the Criminal Code of the Gold Coast Colony and not in English or Scottish cases that the law of sedition for the colony was to be found. The elaborate structure of s. 330 suggested that it was intended to contain as far as possible a full and complete statement of the law of sedition in the colony. Therefore their lordships turned to the Code, and they found nothing in s. 330 to support the appellant's contentions. "Seditious words," in the terms of sub-s. (8), "are words expressive of a seditious intention." By an earlier definition in the same sub-section: "'A seditious intention' is an intention to bring into hatred or contempt . . . the Government of the Gold Coast as by law established." Their lordships found those words clear and unambiguous. Nowhere in the section was there anything to support the view that incitement to violence was a necessary ingredient of the crime of sedition. The submission that there must be some extrinsic evidence of intention, outside the words themselves, before seditious intention could exist must also fail for the same reason. The legislature of the colony might have defined "seditious words" by reference to an intention proved by evidence of other words or overt acts; it was sufficient to say that they had not done so. The appeal should be dismissed.

COUNSEL: *Pritt*, K.C., and *Wiggins*; *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *Kenelm Preedy*.

SOLICITORS: *Hy. S. L. Polak & Co.*; *Burchells*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

House of Lords.

Smith *v.* **Cammell Laird & Co., Ltd.**

Viscount Maugham, Lord Atkin, Lord Russell of Killowen, Lord Wright and Lord Porter. 4th December, 1939.

FACTORY—SHIPBUILDING YARD—CONSTRUCTION OF VESSEL—STAGING ERECTED IN VESSEL BY OWNERS OF YARD—USED BY INDEPENDENT CONTRACTOR—DEFECT IN STAGING—INJURY TO CONTRACTOR'S WORKMAN—LIABILITY OF OWNER OF YARD AS "OCCUPIER"—FACTORY AND WORKSHOP ACT, 1901 (1 Edw. VII, c. 22), ss. 79, 104—SHIPBUILDING REGULATIONS, 1931 (S.R. & O., 1931, No. 133).

Appeal from a decision of the Court of Appeal (Greer and Clauson, L.JJ.; Slesser, L.J., dissenting) affirming a decision of Goddard, J.

The defendant company were the owners of a shipbuilding yard in which they had been engaged in building the "Dunedin Star" for the Blue Star Line. After being launched, the vessel was taken to the wet dock forming part of the defendants' yard, the work of completing her being there carried out by the defendants and by other concerns employed directly by the Blue Star Line. The defendants had erected a staging in the forehold of the vessel for purposes of their own work, but when that work was completed they left the staging in position for the convenience of the Cork Insulation Co., who duly made use of it, the defendants inspecting it twice daily. At the request of the Insulation Company certain lashings were removed, and as a result a plank in the staging slipped under one of the Insulation Company's workmen as he was walking on the staging, and he fell and was seriously injured. He accordingly sued the defendants, alleging against them breach of statutory duty as "occupiers" within the meaning of the Shipbuilding Regulations, 1931, which provide that "it shall be the duty of the occupier to comply with Parts I to VIII of these regulations." Goddard, J., and the Court of Appeal held that the obligations as occupiers fell on the Insulation Company and not on the defendants, and the plaintiff now appealed. (*Cur. adv. vult.*)

VISCOUNT MAUGHAM said that the only guide to the meaning of the word "occupier" in the regulations was a proviso, relating to ships under repair in public dry dock, to the effect that the person who contracted with the shipowner or his agent to execute the repairs should be deemed the occupier for the purposes of Pts. I to VIII. That was not a sufficient guide to rely on safely. He accepted Goddard, J.'s, findings of fact, including the finding that the Insulation Company and not the defendants were the occupiers of the staging or the part of the ship where the staging was. No clear guide was derivable from the authorities on this subject. Even the decisions of that House were almost impossible to reconcile (see *Smith* v. *The Standard Steam Fishing Co., Ltd.* [1906] 2 K.B. 275). *Houlder Line, Ltd.* v. *Griffin* [1905] A.C. 220 was of no assistance in this case. He (his lordship) could not think that a "factory" in the Act meant a building which could have only one occupier. That word, he thought, was intended to mean the person who ran any separate undertaking in any building and who regulated the work which was done. The Act did not define "occupier." The

sanctions were fines imposed on the occupier under ss. 135–137 with provisions for exemption in certain conditions under ss. 140–142. With all respect to those who thought otherwise, he (his lordship) thought that all those sections showed that it was the person in actual control of the undertaking called the factory who was to be subject to penalties. He would rely on *Bartell* v. *W. Gray & Co.* [1902] 1 K.B. 225, and *Weavings* v. *Kirk & Randall* [1904] 1 K.B. 213, as correctly decided. In the circumstances, however, the appeal must be allowed, but he regretted that the House should have to arrive at a conclusion which seemed to him unfortunate and unjust.

LORD ATKIN said that if it were sought to inquire into the meaning of the word "occupier" in the sentence stating that it was the duty of the occupier to comply with Pts. I to VIII of the Shipbuilding Regulations, 1931, by asking "occupier of what?" the only answer could be occupier of that which alone had been previously mentioned in the regulations as capable of being occupied—namely, the shipbuilding yard which was the factory within which the regulations were to operate. It was not the occupier of the "staging or that part of the ship." There was nothing in the regulations which made the hold or the staging a separate factory, and he could entertain no doubt that the duty under s. 11 (*b*) was imposed on the occupier of the only relevant factory, the shipbuilding yard—that was on the defendants. Then came the question whether the duty was absolute or was to be construed as limited to a duty to take reasonable care to maintain; or to maintain only while they were themselves using the staging. It was precisely in the absolute obligation imposed by statute to perform or forbear from performing a specified activity that a breach of statutory duty differed from the obligation imposed by common law, which was to take reasonable care to avoid injuring another. The result of that construction was not unreasonable. The occupiers of a shipbuilding yard had complete control over their yard, and could impose their own conditions on those who entered the yard and used either their own plant or that of the occupiers. Here the defendants had constructed the staging. They could have refused the request of the Insulation Company to abolish the precaution of lashing the planks to the bearers. He (his lordship) therefore saw no reason for not giving the words what he conceived to be their plain meaning. The argument that if the regulations imposed an absolute duty on the occupier of the yard they were *ultra vires* was disposed of by the decision of that House in *Mackey* v. *James Henry Marks* (*Preston*), *Ltd.* [1918] A.C. 59. In the result the action which the trial judge had described as misconceived appeared to be founded on a correct appreciation of the law, and the appeal must be allowed.

The other noble lords concurred.

COUNSEL: *Hartley Shawcross*, K.C., and *C. N. Shawcross*; *Sellers*, K.C., *Selwyn Lloyd* and *Guthrie Jones*.

SOLICITORS: *Helder, Roberts, Giles & Co.*, for *John A Behn, Twyford & Reece*, Liverpool; *Layton & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Bradford Third Equitable Benefit Building Society *v.* Borders.

Sir Wilfrid Greene, M.R., Scott and Clauson, L.JJ.
29th January, 1940.

BUILDING SOCIETY—PURCHASE INDUCED BY FRAUDULENT REPRESENTATIONS—ADVANCE BY SOCIETY—COLLATERAL SECURITY TAKEN—VALIDITY OF ADVANCE—LIABILITY—MEASURE OF DAMAGES—BUILDING SOCIETIES ACT, 1874 (37 & 38 Vict., c. 42), ss. 13, 25.

Appeal from Bennett, J. ([1939] Ch. 520; (1939), 83 SOL. J. 154).

Early in 1934 Mrs. Borders, the defendant, and her husband visited a building estate which was being developed by Morrell (Builders), Ltd., and saw a house on the estate. They were supplied with a brochure which contained the following paragraph: "Morrell (Builders), Ltd., are the only builders in Great Britain who can offer, by special arrangement with a leading building society, a 95 per cent. mortgage advance over a period of 24 years at 5 per cent. interest. This proves without a shadow of doubt the amazing value of Morrell's houses." This passage led Mrs. Borders to believe that the house was exceptionally well built and on 9th February she entered into two contracts, one to purchase the land and the other the house which was to be duly completed. The aggregate purchase price, with the addition of a garage, was £730. Mrs. Borders paid £34 to the vendors and it was arranged that the balance of the purchase moneys, namely, £693, should be found by the plaintiff building society. Mrs. Borders went into possession of the house in March. The plaintiffs' surveyor inspected the house and apparently certified that it was worth the total price of £730. In July certain defects of construction appeared, which the builders agreed to rectify. In October, 1934, the plaintiff society paid the vendors, who conveyed the property to Mrs. Borders. The plaintiff society then claimed that the defendant had executed a mortgage, dated the 10th October, 1934, in their favour of the property to secure the sum of £693, being the purchase price plus certain costs. The defendant being in arrears with her subscriptions, the plaintiffs started this action claiming possession of the mortgaged premises. Mrs. Borders in her defence challenged the validity of the mortgage. She contended that as the society took as security for the money advanced not merely a charge on the house but a charge on moneys deposited with them by the builders, that the transaction was outside the powers of the society as prescribed by their rules and the Building Societies Act, 1874. She counter-claimed for damages, alleging that she was wilfully and fraudulently misled by the society into the belief that the house was a good security for the money advanced. Bennett, J., dismissed the action on the ground that the plaintiff society had failed to discharge the burden of proving that the mortgage deed was executed by Mrs. Borders or her husband. He further held that the plaintiffs had done nothing *ultra vires* in taking a collateral security from the builders. The learned judge also dismissed Mrs. Borders' counter-claim for damages for fraudulent misrepresentation. He was satisfied that the house was badly constructed and deceptive means had been used to conceal its deficiencies. He was also satisfied that Mrs. Borders had bought on the faith of the representations that the house was well constructed. He held, however, that she had failed to prove that the plaintiff society was responsible for the statements which had been made. Mrs. Borders appealed.

CLAUSON, L.J., delivered the judgment of the court. He said before considering the counter-claim it was necessary to mention the defence set up by Mrs. Borders that, assuming the mortgage to have been duly executed, the transaction between herself and the plaintiffs was invalid by reason of the fact that it was *ultra vires* for them to advance money otherwise than on the security of a mortgage of real property. The decision of the learned judge had been fully considered by the Court of Appeal in *Halifax Building Society* v. *Salisbury* (83 SOL. J. 977), and held to be correct. In the present case it was contended that under the rules of the society the transaction in question was invalid. The rules of the society were merely internal regulations which did not have the effect of rendering any transaction, which did not comply with them, invalid. Turning to the counter-claim, the pleadings, as amended, claimed damages for fraud based on the representations in the brochure. Bennett, J., had found that the house was far from being well built and that the plaintiff society's large advance was due, not to the belief that the house was particularly well built, but to the fact that collateral security was provided by the pooling agreement. The learned judge did not find the plaintiffs liable in damages for fraud, because he did not consider the representations were put forward to the plaintiffs' knowledge. In 1933 the brochure in question was in

the plaintiffs' hands. Mrs. Borders was induced by the misrepresentations contained in the brochure to enter into the contract to purchase. The plaintiff society must be taken to have known that she was induced by the misrepresentations in the brochure, which the plaintiffs knew to be false, to purchase the house. In their lordships' view, the learned judge ought to have proceeded on these facts to hold that the plaintiffs could not escape liability for the fraud to which, by their actions, they made themselves parties. There was nothing, however, to show that the plaintiffs' official, who saw the brochure and sanctioned its use, ever placed it before the directors. It might be that the only thing which could fairly be said against the directors was that they employed an official who conducted the plaintiffs' business fraudulently. That, however, being so, the plaintiffs must be visited with the consequences of the fraud. Mrs. Borders' appeal was allowed and Bennet's, J.'s judgment dismissing the counter-claim with costs, reversed. The court directed the following inquiries for the assessment of damages: (1) What sum was at the date of the certificate due to the plaintiffs by the defendant on the footing that she became, on the 10th October, 1934, indebted to the plaintiffs in a sum of £693, repayable with interest at 5 per cent. per annum, and that she had since repaid to the plaintiffs on account of that indebtedness £121 16s.; (2) what was the true value on the 10th October, 1934, of the land with the buildings thereon; (3) what sum would at the date of the certificate be due from the defendant to the plaintiffs on the footing that she became on the 10th October, 1934, indebted to the plaintiffs in a sum less by £34 of that true value, repayable with interest at 5 per cent. per annum, and that she had since repaid to them on account of that indebtedness £121 16s. The plaintiffs were ordered to pay to the defendant, by way of damages for fraud, the amount by which the sum found in answer to the first inquiry exceeded that found in answer to the third.

COUNSEL: *Comyns Carr*, K.C., and *Charles Lewes*, for Mrs. Borders; *Roxburgh*, K.C., and *M. G. Hewins*, for the Society.

SOLICITORS: *W. H. Thompson; Boustred & Sons*, for *J. Eaton & Co.*, Bradford.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—Chancery Division.

Geiringer *v.* Swiss Bank Corporation.

Bennett, J. 24th January, 1940.

PRACTICE—ALIEN ENEMY—SECURITY FOR COSTS.

In April, 1939, the plaintiff started an action against the Swiss Bank Corporation (hereinafter called "the bank") claiming a declaration that the bank held certain investments on trust for the plaintiff absolutely and an order for the transfer of the said investments or the proceeds of sale thereof to the plaintiff. The bank interpleaded. It appeared from the affidavit supporting the claim to interpleader that prior to July, 1938, the investments mentioned in the writ had been held by the London office of the bank for the account of their Zurich office. In July, 1938, the Zurich office instructed the London office to hold the investments for the account of a Viennese bank (hereinafter called "the claimants") having its head seat of control and management in Vienna. The claimants, in January, 1939, instructed the London office to send certain bonds, being part of the investments in dispute, to Vienna. This was done. In March, 1939, they gave instructions for the sale of the remainder of the investments. The London office sold the investments and the proceeds, amounting to £1,105 13s., were merged in the general funds standing to the credit of the claimants' current account with the bank's London office. The claimants claimed such proceeds. The bank claimed no interest therein. On the 6th July, 1939, the Master made an interpleader order, whereby it was ordered that the issue be tried whether the plaintiff or the claimants were entitled to receive and give a good discharge for the sum of £1,105 13s. in the hands of the bank. It was further ordered that in the said issue the claimants be plaintiffs and the plaintiff defendant and all further proceedings in the action were stayed until after judgment in the issue. The claimants delivered their points of claim on the issue on the 7th October, 1939. On the 17th October, 1939, the plaintiff took out a summons by which, as amended, the following relief was sought, namely, an order that the claimants, as the plaintiffs in the issue, give security for the plaintiff's (the defendant in the issue) costs to the satisfaction of the Master, on the ground that the claimants were out of the jurisdiction, and that, in the meantime, all further proceedings be stayed; alternatively, an order that the claimants and all persons claiming through them be for ever barred against the bank, but the order was not to affect the right of the plaintiff and the claimants in the issue as between themselves.

BENNETT, J., dismissing the summons with costs, said: It was admitted that the claimants are alien enemies. So long as there is a state of war between Great Britain and Germany they cannot proceed with their claim. Their rights are in a state of suspense. That being so, it would be unfair now to make an order for security for costs, for they could not comply with it. It would also be unfair to make the order asked for in the alternative. Such an order would not determine the rights of the claimants as against the plaintiff. It would leave their rights suspended but it would enable the plaintiff to recover the money from the bank. The money was in safe hands. It would be unfair to the claimants, before hearing their case on its merits, to bar their rights against a solvent body, which might be their debtor, substituting an individual who would have to be sued in the United States. The plaintiff should not however be left without a remedy for the duration of the war. It was possible to reconsider the order of the 6th July and order that in the issue the plaintiff be the plaintiff and the claimants be the defendants. If the issue was so framed it could be proceeded with during the war.

COUNSEL: *Jopling; Neil Lawson.*

SOLICITORS: *Herbert Oppenheimer, Nathan & Vandyk; D. W. Plunkett.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Barnes; Ashenden *v.* Heath.

Farwell, J. 25th January, 1940.

INDUSTRIAL AND PROVIDENT SOCIETY—MEMBER—NOMINATION—TESTAMENTARY DISPOSITION—DEATH OF BENEFICIARY—REVOCATION OF NOMINATION—INDUSTRIAL AND PROVIDENT SOCIETIES (AMENDMENT) ACT, 1913 (3 & 4 Geo. 5, c. 31), s. 5.

In November, 1924, Mrs. Barnes, who was a member of the Banbury Co-operative Industrial Society, Ltd., executed a nomination which fulfilled the requirements of s. 5 of the Industrial and Provident Societies (Amendment) Act, 1913, of all her property in the society in favour of Mrs. Pankhurst. This was a good nomination up to the sum of £100. In 1932 Mrs. Pankhurst died and her will was proved by the plaintiff. In 1939 Mrs. Barnes died and the defendant, as her executor, obtained a grant of probate to her estate. The society, with the consent of the plaintiff, paid over the £100 to the defendant. The plaintiff took out this summons asking whether, upon the true construction of the Industrial and Provident Societies Acts, 1893 to 1928, and in the events which had happened, the sum of money not exceeding £100, comprised in the nomination dated November, 1924, in favour of Mrs. Pankhurst, formed part of her estate or whether it formed part of the estate of Mrs. Barnes.

FARWELL, J., said that the effect of s. 25 of the Industrial and Provident Societies Act, 1893, for which s. 13 of the Act of 1913 has now been substituted, was plainly stated by Lord Mersey in *Eccles Provident Industrial Co-operative Society, Ltd.* v. *Griffiths* ([1912] A.C. 483, 490; 56 SOL. J. 359), who, in his judgment, said: "Once made, the nomination

takes effect, not by creating any charge or trust in favour of the nominee as against the nominator . . . but by giving to the nominee a right as against the society, in the event of the death of the member without having revoked the nomination, to require the society to transfer the property in accordance with the nomination. Until death the property is the property of the member and all benefits accruing in respect of it during his lifetime are his also." It was clear, from what Lord Mersey said, that the nomination was of an ambulatory nature. The same view was expressed by Farwell, L.J., in the same case in the Court of Appeal ([1911] 2 K.B. 284). Section 5 of the Act of 1913 had the effect of giving to the depositor a power, in its nature testamentary, to deal up to £100 with his interest in the society. If this nomination was in its nature ambulatory one would have thought that, if the nominee died in the lifetime of the nominator, the title of the nominee would lapse. The difficulty in so deciding was that Phillimore, J., as he then was, had, in *Caddick* v. *Highton* ([1901] 2 Ch. 476*n*; (1899), 43 SOL. J. 246), held the contrary. Phillimore, J., based his judgment on the ground that, in his view, a nomination was in its nature like an appointment by deed and not a testamentary disposition. That view was erroneous and inconsistent with what was said in the later case by Lord Mersey and Farwell, L.J. His lordship accordingly did not follow Phillimore, J.'s decision, but held that the death of Mrs. Pankhurst, in the lifetime of Mrs. Barnes, defeated the nomination, with the result that the defendant, as the executor of Mrs. Barnes, was entitled to the money in question.

COUNSEL: *Turnbull; G. A. Rink.*

SOLICITORS: *Wrinch & Fisher*, for *Murton, Clarke and Murton-Neale*, Hawkhurst; *Bristowes*, for *Fairfax, Barfield and Co.*, Banbury.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Fraser-Wallas and Another *v.* Elsie and Doris Waters (a firm).

Lord Hewart, C.J. 29th November, 1939.

NEGLIGENCE—THEATRE—VARIETY PROGRAMME PROVIDED BY DEFENDANTS—MEMBER OF AUDIENCE INJURED BY PERFORMER DURING TURN—ARTISTS ENGAGED BY DEFENDANTS—DEFENDANTS NOT MANAGERS OR OWNERS OF THEATRE—DEFENDANTS' DUTY TO AUDIENCE—RELATIONSHIP WITH PERFORMERS.

Action tried by Lord Hewart, C.J., without a jury.

While the first plaintiff, a member of the audience, was watching a performance taking place on the stage of a theatre, the heel from a shoe of one of the performers became detached as he gave a kick, and flew off, striking the plaintiff in the face, and causing injuries in respect of which she and her husband brought this action. The spectacle at the theatre consisted of a series of variety turns engaged by the defendants under a contract into which they had entered with the owners of the theatre. That contract provided, *inter alia*, that the owners should furnish the theatre and accessories, and that the defendants should provide a full variety programme. In pursuance of the contract, the defendants entered into another contract with, among others, the variety performer whose heel had become detached. By that contract the performer undertook to appear at the theatre as required, and that his performance should not be dangerous to artists or audience, and he agreed to abide by all reasonable rules made by the defendants for the good conduct or the special requirements of the theatre. There was nothing inherently dangerous in the performance in question.

LORD HEWART, C.J., said that in *Cox* v. *Coulson* [1916] 2 K.B. 177, the defendant was the lessee and manager of a theatre, and a member of the audience was accidentally injured through the firing of a pistol on the stage as part of a performance. The Court of Appeal held that the true relation between the plaintiff and the defendant was that of invitee to invitor, and that the defendant owed the plaintiff a duty to use reasonable care that she was not exposed to unusual danger of the existence of which the defendant either knew or ought to have known. That case turned on contract, whereas the present was founded only on an allegation of tort. It had been suggested for the plaintiffs, no authority being cited for the proposition, that in this case the persons on the stage were the servants of the defendants. By their agreement with the management of the theatre the defendants, called "the producers," undertook to provide, produce, and present a variety programme at the theatre, the whole to be to the entire satisfaction of the management. They undertook that the performance should not be dangerous. The defendants, for their part, made a contract called an "emergency contract" with the performers, which provided that the artist accepted "an engagement to appear as required (or in his usual entertainment) at the theatre. . . ." The contract was stated to be subject to the conditions of the Arbitrator's Award, 1919, which, according to the evidence, had come to be the standard contract in such a case as this. In his (his lordship's) opinion, on the documents and the evidence, the performers in the performance of their respective turns were not the servants of the defendants, although there was a contractual relationship between them and the defendants which, undoubtedly, involved some degree of control by the latter of the former. The defendants were putting the matter too high in evidence when they said that they had no control so long as artists abode by their contracts; but he (his lordship) could not extract from the documents or the evidence any higher obligation on the defendants to a member of the audience in the theatre, which was not the defendants' property and from which they did not directly receive any payment, than that which existed between invitor and invitee. On the evidence, however, he found that there was no negligence on the part of either the defendants or the performer in question, and the action failed. The claim had been exaggerated, and he would have awarded the plaintiffs, in any event, only £50 between them.

COUNSEL: *D. Murphy; Jellinek.*

SOLICITORS: *Godfrey A. Elkin; Bevan & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Portavon Cinema Co., Ltd. *v.* Price and Others.

Branson, J. 30th November, 1939.

INSURANCE (FIRE) — LEASED PREMISES — INSURANCE BY LESSEES — INSURANCE WITH DIFFERENT INSURERS BY LESSORS FOR OWN PURPOSES — WHETHER DOUBLE INSURANCE CREATED—FIRES PREVENTION (METROPOLIS) ACT, 1774 (14 Geo. 3, c. 78), s. 83.

Action on a policy of fire insurance.

In 1937 a company leased a cinematograph theatre to the plaintiff company, who covenanted that they would insure the premises against fire. The lessors wished to raise a loan on the premises but the proposed lenders would only agree to the loan if the premises were insured with a subsidiary company of theirs, the Century Insurance Co., Ltd., the second defendants. The plaintiffs insisted on insuring the premises with Lloyd's, one of the underwriters on the policy being the first defendant. The lessors also insured the premises with the second defendants in order to fulfil the condition precedent to obtaining their loan. In April, 1938, the premises were burnt, and the plaintiffs now claimed to be indemnified under the Lloyd's policy for their loss.

BRANSON, J., said that the effect of the insurance of the premises by the lessors with the second defendants was to raise a question under cl. 4 of the Lloyd's policy, which provided: "This insurance does not cover any loss . . . which at the time . . . is insured by or would, but for the existence of this policy, be insured by any other policy . . ." It was argued that the insurance with the second defendants

constituted a case of double insurance coming under cl. 4. In "Macgillivray on Insurance," 2nd ed., at p. 874, it was stated that such clauses were primarily aimed at double insurance, "that is, at cases where the assured has made contracts with other insurers upon the same property and the same interest against the same risk, and . . . a condition . . . ought only to be applied to cases which are strictly cases of double insurance." The question, therefore, was whether there was any double insurance in the present case. It was argued, first, that the insuring with the second defendants raised an equity in favour of the plaintiffs, and that, the plaintiffs having their own insurance with Lloyd's, a double insurance was consequently created. For that proposition, *Waters* v. *Monarch Life Assurance Co.* (1856), 5 E. & B. 1, was cited. That was a case where the owners of a warehouse had insured against fire goods of their customers in it. The court held that the plaintiffs were entitled to recover the value of the goods, Lord Campbell, C.J., saying, 5 E. & B., at p. 881, that they would be entitled to apply so much to cover their own interest and would be trustees for the owners as to the rest. Counsel for the first defendant seized on that passage as showing that where a person took out an insurance on goods not solely his a trust was created in favour of the other owner of the goods. But Lord Campbell, C.J.'s remark had nothing to do with anything which had been argued in that case, and neither Wightman, J., nor Crompton, J., said anything about there being any equity. In his (Branson, J.'s) opinion, no such equity arose in the present case. The lessors of the theatre were not insuring with the second defendants for the purpose of conferring any benefit on the plaintiffs. The mere taking out of a policy could not possibly give an equity to someone else. His lordship dealt with other points raised and said that, finally, it was argued that s. 83 of the Fires Prevention (Metropolis) Act, 1774, which enacted that anyone interested in any building burnt down or damaged by fire might give notice to the insurers calling on them to spend the insurance moneys on making good the damage, had the effect of giving anyone with an interest in a building insured by someone else an insurance on that building. That was a misinterpretation of the Act. A statute which gave A a right to call on B's insurers to expend the policy moneys on the damaged building did not thereby invest A with an insurance on the building. The effect of s. 83 was not to make anyone insured. That decision made it unnecessary to decide whether Lloyd's underwriters came within the class of persons enumerated in the section who might be called upon to spend the policy moneys. He (his lordship) was, however, of the opinion that they did not. There would be judgment for the plaintiffs against the first defendant.

COUNSEL: *Le Quesne*, K.C., and *Maddocks*; *Soskice*; *Willink*, K.C., and *G. O. Slade*.

SOLICITORS: *Wrentmore & Son*, for *Ewan G. Davies*, Cardiff; *Chamberlain & Co.*; *J. Shera Atkinson*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Nash (otherwise Lister) *v.* Nash.

Langton, J. 20th December, 1939.

DIVORCE—NULLITY—INCAPACITY—PLEA OF INSINCERITY IN BRINGING PETITION—TIME OF KNOWLEDGE OF IMPOTENCY MATERIAL—MUST NOT BE APPROBATION AND REPROBATION OF MARRIAGE—DECREE NISI.

This was a petition brought by Ivy Carlisle Nash, otherwise Ivy Carlisle Lister, for a decree of nullity of her marriage to Arthur Peel Nash on the grounds of his incapacity to consummate the marriage, and, alternatively, of his wilful refusal. The respondent denied both of these allegations and pleaded want of sincerity in the petitioner in presenting her petition. The petitioner replied denying insincerity.

LANGTON, J., in giving judgment, stated that the outstanding issue in the case was the unusual one of want of sincerity. The *locus classicus*, and also, in an almost literal sense, the alpha and omega of the doctrine of want of sincerity, was *G.* v. *M.* [1885] 10 App. Cas. 171. Lord Selborne there said that the adoption of the particular phrase "sincerity" seemed to suggest a psychological question rather than one of law and fact, and that the real basis of reasoning which underlay the phraseology was that there might be conduct on the part of the person seeking the remedy which ought to estop that person from having it. His lordship went on to consider *M.L.* v. *E.L.* [1931] S.C. 477, and, continuing, said that the view he had formed from that and the other cases was that the "sincerity" with which the court was concerned had reference only to the sincerity of the plea, and had nothing whatever to do with either the general character of a petitioner as a sincere or insincere person, or with the conduct of a petitioner before the marriage or the motives which prompted a petitioner to enter into the marriage. The words "antecedent time" used by Lord Selborne referred to the time which elapsed between the date of the marriage and due ascertainment of the facts and the law on the one hand, and the date when the plea was put forward on the other hand. In the present case it had never been, nor could it have been, suggested, seeing that the petitioner did not admit incapacity, that the petitioner had any knowledge one way or the other concerning the respondent's capacity before marriage. The petitioner's conduct in connection with this issue could only fall to be examined from the time when she became convinced that the respondent was impotent. His lordship then dealt with the facts and evidence, stating that the petitioner first met the respondent in December, 1938, when she was employed as his typist and secretary-companion, she being thirty-four and he being seventy-three years of age; that the respondent persuaded the petitioner to marry him in January, 1939, and that after an uneasy month of bickering and unhappiness the petitioner left the respondent in February, 1939; that four days after leaving the respondent the petitioner filed her petition for nullity. His lordship resumed, the limitation on the ordinary meaning of the word "sincerity" to which he had alluded seemed to be fairly clearly defined. The petitioner must be sincere in the sense of not having wavered in her view as to the action which she would take to assert her rights after she attained full knowledge of the facts and the law concerning those rights. The court would not allow a petitioner, after attaining that knowledge, to approbate the contract of marriage and obtain rights and benefits thereunder for a term of years, and then subsequently reprobate the contract and claim that it was void on the strength of those very rights which she had long elected to ignore. From what he conceived to be the proper standpoint, the petitioner did not appear to him to be in any manner or degree lacking in the necessary sincerity. There had been no kind of delay in presenting the petition. The petitioner had done nothing to approbate the marriage, had obtained none of the benefits material or otherwise to which a woman had a right on marriage and the continued acceptance of which might properly be held to disqualify from claiming its avoidance. There would be a decree *nisi* of nullity, with costs.

COUNSEL: *Gerald Gardiner*, for the petitioner; *R. A. L. Hillard*, for the respondent.

SOLICITORS: *Gordon, Dadds & Co.*; *James Ball & Sons*.

[Reported by J. F. COMPTON-MILLER, Barrister-at-Law.]

Major B. M. Cloutman, a London barrister, who won the last V.C. to be awarded before the Armistice in the last war, is to rejoin the Army at the age of forty-eight. He was called to the bar by Gray's Inn in 1926.

Sir Donald Somervell, the Attorney-General, has accepted the office of Recorder of Kingston-upon-Thames in succession to Lord Caldecote, who, as Sir Thomas Inskip, also held the office when he was Attorney-General. The only reward attached to the post is a sugar loaf.

Obituary.

MR. F. A. BULLOCK.

Mr. Frederick Acton Bullock, solicitor, of Messrs. Goate, Bullock & Norris, solicitors, of Coventry, died on Thursday, 22nd February, at the age of eighty-four. Mr. Bullock was admitted a solicitor in 1891.

MR. H. S. PRATT.

Mr. Henry Simcox Pratt, solicitor, of Messrs. Hall, Pratt and Pritchard, solicitors, of Bilston, Staffs, died on Thursday, 15th February, at the age of seventy-nine. Mr. Pratt was admitted a solicitor in 1883, and was a former President of the Wolverhampton Law Society. He had also held the appointments of Clerk to the Bilston and Sedgley Magistrates.

MR. H. C. WARRY.

Mr. Henry Cockeram Warry, solicitor, of Messrs. Marsh, Warry & Arrow, solicitors; of Yeovil, died on Friday, 23rd February, at the age of seventy-nine. He was admitted a solicitor in 1888.

MR. A. J. WINTER.

Mr. Alfred John Winter, retired solicitor, of Sheringham, died on Wednesday, 14th February, at the age of eighty. He was admitted a solicitor in 1881, and had been Registrar of Swaffham County Court for fifty-two years.

Societies.

The Law Society.

A special general meeting of members of The Law Society, attended by over 700 members, was held on the 23rd February, at the Connaught Rooms, Great Queen Street, W.C.1, under the chairmanship of Mr. Randle F. W. Holme, the President of the Society, when a report of the Council of The Law Society was submitted for approval containing proposals for the formation of a fund to meet losses suffered by members of the public through defalcations by solicitors and for the compulsory examination of solicitors' accounts. The report was adopted by an overwhelming majority, and the Council will accordingly take steps to bring about the introduction of a Bill containing provisions to give effect to these decisions. A motion by a member that the Bill should also provide that all practising solicitors should become members of The Law Society was carried on a show of hands, but a poll of all members was demanded and will be taken as soon as possible.

The Birmingham Law Society.

The annual general meeting of the Birmingham Law Society was held at the Law Library, Birmingham, on Wednesday, the 28th February, when the 121st annual report of the proceedings of the Society was presented.

At the January meeting of the Committee, Mr. J. T. Higgs was elected President, Mr. W. C. C. Gell Vice-President, and Mr. G. C. Barrow and Mr. J. F. Crowder Joint Honorary Secretaries and Treasurers.

At the last annual meeting there were eight vacancies on the Committee, and the following gentlemen were elected: Messrs. E. R. Bickley, W. H. Coley, A. J. Gateley, H. W. Lyde, W. C. Mathews, G. A. C. Pettitt, Roy Pinsent, L. A. Smith, and G. Tyndall.

The report, which dealt with the year ended 31st December, 1939, may be summarised as follows:—

The membership of the Society shows an increase of six as compared with last year, the number on the register on the 31st December, 1939, being 466. This is the highest total on record for this Society.

The City Council have elected Councillor T. B. Pritchett to be Lord Mayor of Birmingham for 1939–40, and the Committee have prepared an illuminated address which has been presented to him.

Mr. Pritchett is the fourteenth solicitor to be Mayor or Lord Mayor of the City. He has given distinguished service on the City Council for many years, and especially as Chairman of the Estates Committee.

The following members died during the year: Messrs. H. Cant, F. W. Green (Coroner for Dudley), G. P. Locker, W. J. Rabnett, W. H. Warwick and P. H. Willmot, who was for many years Registrar of the West Bromwich and Walsall County Courts.

The income and expenditure account shows an excess of expenditure over income of £92 4s. 6d. after placing £500 to a reserve for depreciation of premises and £100 to a reserve for repairs and contingencies. This reduction in credit balance is due to smaller sales of conditions and increase of taxation.

Ten thousand four hundred and sixty-six books have been issued by the library during the year, a decrease on last year's figure.

MEDALS AND PRIZES.

The Society's Bronze Medal has been awarded to Mr. P. S. Horden, articled to Mr. W. F. Horden, of Birmingham, and to Mr. J. S. Haselhurst, articled to Mr. H. J. H. Saunders, of Evesham, who were awarded Second Class Honours in the November Examination. The Committee has also awarded each of them a prize of books to the value of three guineas.

In the June examination Mr. G. W. Bain, articled to Mr. F. M. Tomkinson, of Birmingham, Mr. B. Cadbury, articled to Mr. Charles Ekin, of Birmingham, and Mr. R. K. Cooke, articled to Mr. A. G. Rudge, of Brierley Hill, took Third Class Honours, and the Committee have awarded each of them a prize of books to the value of two guineas.

LAW SOCIETY.

A suggestion was put forward by the Associated Law Societies of Wales that the constitution of The Law Society should be altered to permit provincial solicitors to have equal representation with London solicitors on the Council and that for the purposes of representation the provinces should be divided into constituencies each returning one member of the Council.

The Committee expressed sympathy with the proposals and suggested that there should be an equal number of country solicitors and London solicitors on the Council to be arrived at by an increase of four of the extraordinary members at the expense of the London members. The Committee did not approve the proposal to alter the mode of election of the members of the Council.

The matter is at present in abeyance.

DEFALCATIONS BY SOLICITORS.

At the annual meeting of The Law Society held in July last a resolution was unanimously adopted referring the whole question of a fund to recompense persons who suffer from defalcations by solicitors to the Council with a request that they prepare a report to be circulated to all members a reasonable time before a general meeting to be called for the purpose of receiving and considering that report.

On the 8th December last, the Council of The Law Society adopted a report for submission to a special general meeting of the members. This document has since been printed and circulated to the members of The Law Society. It contains important recommendations for the formation and administration of a relief fund and for the annual examination of solicitors' books by qualified accountants.

Legislation would be necessary to give effect to these recommendations but it is not proposed that they should come into operation until after the termination of the war.

CONVEYANCING SCALE CHARGES.

The Law Society in May requested Provincial Law Societies in adjoining areas to meet together to discuss the fixing of minimum scales and to fix boundaries for the operation of such scales. Meetings of the Midland Societies were convened by Mr. W. A. Coleman, the Midland representative on the Council, and were held in the Law Library. Representatives of this Society also attended a meeting of the larger societies held in Manchester to discuss the possibility of fixing one scale applicable to large towns as distinct from urban and rural areas.

Since the outbreak of war the question of the preparation and enforcement of local minimum scales has been in abeyance.

REGISTER OF PRACTICES.

A register of practices is now being kept at the Library, and any member who has not already sent in particulars of practices acquired by him or his predecessors, amalgamations and changes in the constitution of partnership firms, is requested to do so. The register already has some information in it of considerable historical interest and has been used several times to assist in tracing documents prepared by solicitors or firms who are no longer in practice. The register is open to inspection at any time.

RECORDS.

The Committee would again call the attention of members to the advisability of old deeds and records being placed in the authorised repositories, where they will be cared for and made available for the historian.

The local repositories are :—

Birmingham and District ..	The Reference Library, Birmingham.
County of Warwick (excluding Birmingham and District)	The Trustees, Shakespeare's Birthplace, Stratford-upon-Avon.
County of Stafford	The William Salt Library, Stafford.
County of Worcester ..	The Shire Hall, Worcester.

SOLICITORS' CLERKS' PENSION FUND.

The Solicitors' Clerks' Pension Fund was inaugurated in 1930, and copies of the Memorandum were then circulated to all solicitors.

The scheme has not yet received the support it deserves, and the Committee urge members to inform their clerks of its existence and encourage and assist them to join it. The Birmingham representative is Mr. W. Froggatt, c/o Messrs. Pinsent and Co.

POOR PERSONS PROCEDURE.

The Committee nominated under the Poor Persons Rules, 1925, have continued to carry on their work during the year.

One meeting of the full Committee was held during the year, and forty-nine meetings of the rota members.

The number of applications for certificates has been unchanged by the war, but the income of many applicants has been too high for a certificate, due to overtime, and they will probably apply again for certificates in normal conditions.

Owing to the war the number of barristers on the rota is gradually getting less, as the younger barristers take most of the cases, and will probably be half the original number in a few months time. The position is therefore becoming serious.

The number of solicitors on the rota has not been affected a great deal by the war, but many letters have been received saying that owing to office reorganisation and war conditions no poor persons cases could be undertaken at present. Owing to these difficulties very few cases have been sent out since the outbreak of war.

The position with regard to arrears has not improved, and there is a period of some twelve months after the certificate is granted before cases are sent to solicitors.

There have been few cases of outstanding interest during the year. With the co-operation of the Egyptian Consulate and the Batonnier of the Cairo Bar the Committee obtained an Ishad or formal decree of divorce under Mahomedan law for an English girl married to an Egyptian. This case illustrates the ready assistance which is always given to a poor persons committee when seeking information or some remedy in another country.

In conclusion, the Committee wish to thank both branches of the profession for their co-operation during the year.

POOR MAN'S LAWYERS' ASSOCIATION, BIRMINGHAM.

The Poor Man's Lawyers' Association, which is quite independent of the Poor Persons Committee, continues to give free legal advice as heretofore to persons too poor to pay for it. The Committee and the Association work in concert, the Association transmitting suitable cases to the Committee.

During the year several members have rendered valuable assistance in this work. It is understood that the need for further consultants is pressing and the Honorary Secretary of the Association, Mr. C. E. Barker, will be glad to hear from any further members or senior articled clerks willing to give their services. The Society's representatives on the Committee of the Association are Messrs. E. R. Bickley and Gardner Tyndall.

LEGAL EDUCATION.

A copy of the Report of the Birmingham Board of Legal Studies for the year ended 31st July last shows that the total number of students is 116 (compared with 108 in the previous year), of whom forty are reading for The Law Society's Examinations.

Solicitors' Managing Clerks' Association.

ANNUAL GENERAL MEETING.

This Association held its annual general meeting on the 15th February.

Mr. WILLIAM H. CHATFIELD, the retiring President, said, in his address, that the membership had been slightly increased. The benevolent fund had been brought into being and £50 had been placed to the credit of the account, but so far, he was happy to say, there had been no application for a grant. The Association had taken an active part in opposing the Solicitors Bill so far as the interests of solicitors' clerks were concerned. A deputation had attended before the Council of The Law Society and had submitted the views of the Association, but these had not been accepted. With Mr. P. G. Chaddock and Mr. E. G. Tindall, he had attended before a Joint Committee of the House of Lords and the House of Commons and again expressed the views of the Association, but the Committee had concluded that managing clerks were safeguarded. The Bill was not being proceeded with at the moment owing to the large amount of war legislation. The social side of the Association's activities had unfortunately been curtailed by the war. Members of the council had worked very hard, and he owed them thanks for the assistance which he had received during his year of office.

War Legislation.

(*Supplementary List, in alphabetical order, to those published, week by week, in* THE SOLICITORS' JOURNAL, *from the 16th September*, 1939, *to the 24th February*, 1940.)

Progress of Bills.

House of Lords.

Agriculture (Miscellaneous War Provisions) Bill [H.C.].
Read Second Time. [29th February.
Cotton Industry Bill [H.L.].
Read Third Time. [21st February.
Industrial Assurance and Friendly Societies (Emergency Protection from Forfeiture) Bill [H.C.].
Read Second Time. [21st February.
Royal Society for the Prevention of Cruelty to Animals Bill [H.L.].
Read Second Time. [20th February.
Solicitors (Emergency Provisions) Bill [H.L.].
Read Second Time. [20th February.
Special Enactments (Extension of Time) Bill [H.L.].
Read Third Time. [21st February.

House of Commons.

Mental Deficiency (Scotland) Bill [H.L.].
Read Third Time. [27th February.
Old Age and Widows' Pensions Bill [H.C.].
Read Second Time. [21st February.
Rating and Valuation (Postponement of Valuations) Bill [H.C.].
Read Second Time. [15th February.
Societies (Miscellaneous Provisions) Bill [H.C.].
Read First Time. [1st February.

Statutory Rules and Orders.

No. 222. **Children and Young Persons, England.** Approved Schools. The Children and Young Persons (Contributions by Local Authorities) Regulations, dated February 16.

No. 236. **Civil Defence.** The Air-Raid Precautions (Storage and Loan of Equipment) Regulations, dated February 21.

No. 237. **Customs.** Export Licence—Sample Packets. Open General Export Licence, dated February 12, in respect of Goods sent by Post as Sample Packets. (No. G.L. 219.)

No. 244. **Emergency Powers (Defence).** Order in Council, dated February 22, amending Regulations 31A, 31B and 102 of the Defence (General) Regulations, 1939.

No. 245. Emergency Powers (Defence). Order in Council, dated February 22, adding Regulation 63B to the Defence (General) Regulations, 1939.

No. 242. Emergency Powers (Defence). Order, dated February 20, amending the Bacon (Prices) Order, 1940.

No. 223. Emergency Powers (Defence). The Fish (Chilled or Frozen) (Returns) Order, dated February 19.

No. 220. Emergency Powers (Defence). The Control of Flax Seed (No. 2) Order, dated February 17.

No. 219. **Insurance** (Auditors' Certificate) (Amendment) Regulations, dated February 23.

No. 226. **National Health Insurance** (Medical Benefit) Amendment Regulations (No. 2), dated February 13.

No. 224. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 2) Order, dated February 20.

No. 221. **Workmen's Compensation** (Industrial Diseases) Order, dated February 12.

Draft Statutory Rules and Orders.

Czecho-Slovakia (Settlement of Financial Claims) Order, 1940.

Non-Parliamentary Publications.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Supplement 11, revised to February 21.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

Mr. RAYMOND NEEDHAM, K.C., has been appointed honorary counsel to the Finnish Legation in London. Messrs. Ridsdale and Son will continue to act as solicitors to the Legation.

Professional Announcements.

(2s. per line.)

DOUGLAS P. STURTON, practising as GIBSON & STURTON, at 16, Castle Park, Lancaster, announces that he has taken into partnership his elder son, H. JOHN PHIPPS STURTON. The name of the firm remains unchanged. Mr. H. J. P. Sturton has, for the past ten years, been a partner in the firm of Hunt & Sturton (amalgamating Fowle, Hunt & Sturton and Gardner, Hunt & Sturton) of Northallerton, Yorks.

Messrs. MELLOWS & SONS' branch office at 20A, Station Approach, Ilford, has been temporarily closed owing to Major R. K. Lamplugh being absent on military service.

Notes.

By a majority of seven to six the "whole Court" of thirteen judges of the Court of Session, Edinburgh, recently upheld a decision by Lord Robertson that under Scots law a man must be willing to live with his wife right up to the time of raising an action for divorce against her on the ground of desertion, otherwise the action cannot be entertained.

On the occasion of his retirement as chief clerk to the judicial department of the Privy Council Office, Mr. W. Reeve Wallace was presented on Monday last with a silver Privy Council ink-stand, suitably inscribed. Lord Stanhope, Lord President of the Council, was in the chair. There were also present the Lord Chancellor, Lord Hailsham, Lord Sankey, Lord Maugham, Lord Atkin, Lord Thankerton, Lord Wright, Lord Alness, Lord Romer, Lord Porter, Sir George Rankin and Sir Claude Schuster. The Lord Chancellor, in making the presentation, said that Mr. Wallace had been in the Privy Council Office for thirty-eight years, and had held his present position for thirty-one years. He had served under nine Lord Chancellors, excluding himself. Mr. Wallace is to remain in office until the end of the war.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT. No. 1.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Mar. 4	More	Reader	Ritchie
,, 5	Reader	Andrews	Blaker
,, 6	Andrews	Jones	More
,, 7	Jones	Ritchie	Reader
,, 8	Ritchie	Blaker	Andrews
,, 9	Blaker	More	Jones

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Witness.	MR. JUSTICE SIMONDS. Non-Witness.	MR. JUSTICE CROSSMAN. Witness.	MR. JUSTICE MORTON. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Mar. 4	More	Andrews	Jones	Blaker
,, 5	Reader	Jones	Ritchie	More
,, 6	Andrews	Ritchie	Blaker	Reader
,, 7	Jones	Blaker	More	Andrews
,, 8	Ritchie	More	Reader	Jones
,, 9	Blaker	Reader	Andrews	Ritchie

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 7th March, 1940.

	Div. Months.	Middle Price 28 Feb. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108½	3 13 9	3 6 9
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3½% 1952 or after	JD	99½	3 10 4	—
Funding 4% Loan 1960–90	MN	112½	3 11 1	3 2 11
Funding 3% Loan 1959–69	AO	98¾	3 0 9	3 1 4
Funding 2¾% Loan 1952–57	JD	98¼	2 15 11	2 17 8
Funding 2½% Loan 1956–61	AO	92½	2 14 2	3 0 0
Victory 4% Loan Av. life 21 years	MS	109¾	3 12 11	3 6 10
Conversion 5% Loan 1944–64	MN	110¾	4 10 3	1 14 7
Conversion 3½% Loan 1961 or after	AO	99xd	3 10 8	—
Conversion 3% Loan 1948–53	MS	101⅜	2 18 11	2 14 9
Conversion 2½% Loan 1944 49	AO	99½xd	2 10 3	2 11 3
National Defence Loan 3% 1954–58	JJ	101½	2 19 1	2 17 6
Local Loans 3% Stock 1912 or after	JAJO	86½	3 9 4	—
Bank Stock	AO	338	3 11 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	82	3 7 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	86½	3 9 4	—
India 4½% 1950–55	MN	112	4 0 4	3 1 9
India 3½% 1931 or after	JAJO	93½	3 14 10	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939–73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	106	3 15 6	3 6 9
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
L.P.T.B. 4½% "T.F.A." Stock 1942–72	JJ	104	4 6 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91½	2 14 8	3 3 9
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	105½	3 15 10	3 10 5
Australia (Commonw'th) 3% 1955–58	AO	91½	3 5 7	3 12 6
*Canada 4% 1953–58	MS	107½	3 14 5	3 5 8
*Natal 3% 1929–49	JJ	99	3 0 7	3 2 8
*New South Wales 3½% 1930–50	JJ	98½	3 11 1	3 13 8
*New Zealand 3% 1945	AO	97½	3 1 6	3 11 1
Nigeria 4% 1963	AO	107	3 14 9	3 11 2
Queensland 3½% 1950–70	JJ	95½	3 13 4	3 15 0
*South Africa 3½% 1953–73	JD	102	3 8 8	3 6 2
*Victoria 3½% 1929–49	AO	99½	3 10 4	3 11 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Croydon 3% 1940–60	AO	93	3 4 6	3 9 10
*Essex County 3½% 1952–72	JD	102	3 8 8	3 6 2
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	95	3 13 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84½	3 11 0	—
*London County 3½% Consolidated Stock 1954–59	FA	103	3 8 0	3 4 7
Manchester 3% 1941 or after	FA	84	3 11 5	—
*Metropolitan Consd. 2½% 1920–49	MJSD	98	2 11 0	2 14 10
Metropolitan Water Board 3% "A" 1963–2003	AO	88	3 8 2	3 9 5
Do. do. 3% "B" 1934–2003	MS	88½	3 7 10	3 9 0
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
*Middlesex County Council 4% 1952–72	MN	105	3 16 2	3 10 3
* Do. do. 4½% 1950–70	MN	108	4 3 4	3 12 2
Nottingham 3% Irredeemable	MN	84	3 11 5	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	104½	3 16 7	—
Gt. Western Rly. 4½% Debenture	JJ	112	4 0 4	—
Gt. Western Rly. 5% Debenture	JJ	123½	4 1 0	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	113	4 8 6	—
Gt. Western Rly. 5% Preference	MA	100½	4 19 6	—
Southern Rly. 4% Debenture	JJ	102½	3 18 1	—
Southern Rly. 4% Red. Deb. 1962–67	JJ	105½	3 15 10	3 12 8
Southern Rly. 5% Guaranteed	MA	115	4 6 11	—
Southern Rly. 5% Preference	MA	102½	4 17 7	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

40

ain

tock

proxi-
Yield
th
aption

s.	d.
6	9
–	
–	
2	11
1	4
7	8
0	0
6	10
4	7
–	
4	9
1	3
7	6
–	
–	
–	
–	
1	9
–	
–	
0	2
6	9
4	8
0	0
3	9
0	5
2	6
5	8
2	8
3	8
1	1
1	2
5	0
6	2
1	2
–	
0	10
6	2
–	
–	
–	
–	
4	7
–	
4	10
0	5
0	0
8	2
0	3
2	2
–	
8	10
–	
–	
–	
–	
–	
2	8
–	
–	

lated